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

In the matter of an application for Restitutio in Integrum and/or Revision in terms of Article 138 of the Constitution.

(In the District Court of Colombo)

DC Case No. DDR/71/2022
Revision No. RII/52/2023

Nations Trust Bank PLC,
Having its registered Company address and principal place of business at:
No. 242,
Union Place,
Colombo 2.
Company Registration No: PQ 118

PLAINTIFF

Vs.

1. **Engenuity (Private) Limited,**
   Level 16,
   Bank of Ceylon Merchant Tower,
   St. Michaels Road,
   Colombo 03.

2. **Sri Lanka Institute of Information Technology (Guarantee) Limited**,
   Level 16,
   Bank of Ceylon Merchant Tower,
   St. Michaels Road,
   Colombo 03.

DEFENDANTS

AND THEN

In an application under and in terms of the Debt Recovery (Special Provisions) Act No. 2 of 1990, amended by Act No. 9 of 1994.

Sri Lanka Institute of Information Technology (Guarantee) Limited,
Level 16,
Bank of Ceylon Merchant Tower,
St. Michaels Road,
Colombo 03.

2nd DEEFENDANT-PETITIONER

Vs.

Nations Trust Bank PLC,
Having its registered Company address and principal place of business at:
No. 242,
Union Place,
Colombo 2.
Company Registration No: PQ 118

PLAINTIFF-RESPONDENT

Engenuity (Private) Limited,
Level 16,
Bank of Ceylon Merchant Tower,
St. Michaels Road,
Colombo 03.

1st DEFENDANT-RESPONDENT

AND NOW BETWEEN

(In the Court of Appeal)

Sri Lanka Institute of Information Technology (Guarantee) Limited,
Level 16,
Bank of Ceylon Merchant Tower,
St. Michaels Road,
Colombo 03.

2nd DEFENDANT-PETITIONER-PETITIONER

Vs.

Nations Trust Bank PLC,
Having its registered Company address
and principal place of business at:
No. 242,
Union Place,
Colombo 2.
Company Registration No: PQ 118

PLAINTIFF-RESPONDENT-RESPONDENT

Engenuity (Private) Limited,
Level 16,
Bank of Ceylon Merchant Tower,
St. Michaels Road,
Colombo 03.

1st DEFENDANT-RESPONDENT-RESPONDENT

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Nishan Premathiratne with Sidath Gajanayake and Ishara Jayakodiarachchi instructed by Gamindu Karunasena for the 2nd Defendant-Petitioner-Petitioner.

Palitha Kumarasinghe, P.C. with Viraj Bandaranayake instructed by Poornima Perera for the Plaintiff-Respondent-Respondent.

Written Submissions: By the Plaintiff-Respondent-Respondent filed on 10/02/2026.

By the 2nd Defendant-Petitioner-Petitioner filed on 10/02/2026.

Argued On: 15/07/2025, 19/09/2025, 11/11/2025 and 20/01/2026.

Judgement On: 08/05/2026.

Dr. Sumudu Premachandra J.

1] The Petitioner, Sri Lanka Institute of Information Technology (SLIIT), a prominent private tertiary educational institute in Sri Lanka operating under the University Grants Commission, is the 2nd Defendant in a debt recovery case (No. DDR/71/2022) filed in the District Court of Colombo by the Plaintiff (Nations Trust Bank PLC) under the Debt Recovery Act.

2] The Petitioner states that it was only a guarantor for a subsidiary company, and that the actual borrower (the 1st Defendant) has never appeared in court. The Petitioner is seeking urgent relief from Court against an Order dated 02/11/2023 ("P1"), which refused to grant them leave to appear and show cause, and effectively ordered the Petitioner to pay a sum exceeding Rs. 100 million by making the Decree Nisi absolute.

3] In the original case, the Plaintiff moved ex parte for a Decree Nisi dated 09/11/2022 ("P3"). The Petitioner timely filed an application on 24/11/2022 ("P4"), seeking leave to appear and show cause while presenting several defenses. They also highlighted applicable Central Bank moratoriums. Following oral arguments, the Petitioner tendered extensive written submissions on 22/03/2023 ("P5"). Screenshots from the Petitioner's website are presented to show its scale ("P2"). Despite these efforts, the Additional District Judge

delivered the Impugned Order on 02/11/2023, making the Decree absolute without granting the Petitioner an opportunity to defend itself.

4] The Petitioner asserts that the Impugned Order is bad in law, disregards natural justice (audi alteram partem), and was made in complete contravention of section 6 of the Debt Recovery Act. They argue that the Judge misdirected himself by demanding a prima facie sustainable defense rather than granting conditional leave upon a suitable deposit. Because the actual borrower never participated, the Petitioner argues that they are being held automatically liable for an exorbitant sum based on untested evidence. Consequently, the Petitioner is invoking the Court's jurisdiction for Revision and/or Restitutio in Integrum to prevent a grave miscarriage of justice.

5] Highlighting the urgency and the potential for irremediable harm to its operations serving over 19,000 students, the Petitioner requests an interim stay on the execution of the Impugned Order. To support its claims, the Petitioner has annexed a true copy of a Leave to Appeal application filed in the Civil Appellate High Court (bearing No. 204/23/LA) marked as "P6".

6] The Petitioner prays that this Court be pleased to;

a) Issue Notice of this Application on the Respondents;

b) Grant an Order revoking and / or revising and / or setting aside and / or annulling the impugned Order of the Learned Additional District Judge of Colombo marked "P1" dated 02/11/2023 in case bearing No. DDR/71/2022;

c) Grant an Order permitting the 02nd Defendant-Petitioner-Petitioner leave to appear and show cause in case bearing No. DDR/71/2022 in the District Court of Colombo;

d) Grant an Interim Order staying the operation of the Impugned Order marked "P1" dated 02/11/2023 and any related proceeding arising from

such Order in case bearing No. DDR/71/2022 in the District Court of Colombo until the final determination of this Application;

e) Grant an Interim Order to maintain the status quo which prevailed at the date of this Petition until the matter is supported and / or determined finally;

f) Grant Costs;

g) Grant such other and further reliefs as Your Lordships' Court shall deem meet.

7] This matter was supported for interim reliefs and formal notices and by Order dated 18/03/2024, interim relief and formal notices were granted.

8] In the objections, the Plaintiff Bank asserts that it is a licensed commercial bank and a "Lending Institution" under the Debt Recovery (Special Provisions) Act No. 2 of 1990. The bank raises a preliminary objection, arguing that the court lacks jurisdiction to revise the previous District Judge's Order unless the Petitioner discloses a prima facie sustainable defense or pays/furnishes security for the full Decree amount.

9] The core dispute revolves around credit facilities granted to the 1st Defendant (the Petitioner's parent or affiliate). The bank granted several facilities, and the Petitioner executed corporate guarantees in 2017 to secure them. Due to a failure to settle an Import Finance Loan/Letter of Credit, the bank and the 1st Defendant agreed to reschedule the debt in November 2019 into two new facilities: a revolving short-term loan of Rs. 75 million and a term loan of Rs. 124 million. The Petitioner signed documents confirming that its existing corporate guarantees would apply to these newly rescheduled facilities.

10] The Bank details that it granted several facilities to the 1st Defendant-Respondent-Respondent, which were later rescheduled into two new facilities: A

Short-Term Revolving Facility of Rs. 75 Million and a Term Loan Facility of Rs. 124 Million. To secure these facilities, the Petitioner executed corporate guarantees (marked X6, X7, and X8) totalling Rs. 180 Million and provided a third-party letter of setoff. The Bank emphasizes that the Petitioner expressly agreed to maintain these guarantees as security for the newly structured debts.

11] Following a default on the monthly installments of the Rs. 124 million term loan, the bank exercised its rights to recover the debt. It uplifted a Rs. 100 million fixed deposit held by the Sri Lanka Institute of Information Technology (Guarantee) Limited, the Petitioner in this matter, which was under lien as security for the facilities. After crediting these realized funds and other part payments to the loan account, the bank claimed that a balance of over Rs. 110.5 million remained due and owing as of September 2021. Letters of demand were subsequently sent to both the 1st Defendant and the Petitioner.

12] The bank successfully obtained a Decree Nisi from the District Court for the outstanding sum. The Petitioner then sought leave to appear in the Civil Appellate High Court of Colombo to show cause against the Decree. The bank argues that the District Judge correctly refused the Petitioner's application because no prima facie sustainable defense was disclosed. After obtaining an interim stay from this court, the Petitioner withdrew the related application in the Civil Appellate High Court, bearing No. HCCA/LA/204/2023.

13] The Plaintiff Bank argues that the Petitioner failed to comply with statutory requirements when applying for leave to appear and show cause under the Debt Recovery Provisions. Furthermore, the Bank asserts that the Petitioner directly disobeyed court directives by attempting to dismiss the action based on a Central Bank circular rather than following the prescribed legal inquiry.

14] In replying, the Petitioner says that the Impugned Order is unlawful and "shocks the conscience of the Court." The Petitioner asserts that the court has unfettered jurisdiction to hear this application independently of other remedies. They also highlight that on 18/03/2024, the court had already granted them

two Interim Orders and issued formal notice to the Respondent, effectively overruling the Respondent's previous preliminary objections. However, this court notes that previous Interim Orders were given by a single judge of this court, and those remain Interim and are subject to being vacated by a final/permanent Order.

15] A central argument is that the Learned Additional District Judge grossly misinterpreted Section 6(2) of the Debt Recovery Act. The Petitioner contends that the law only requires the establishment of a "prima facie sustainable defence" under specific sub-sections, and that they should have been granted leave to appear and show cause against the Decree Nisi. They argue that the Respondent's claim that they acted in "disobedience" of the District Court is unfounded, and that the judge relied on untested factual evidence placed in written submissions rather than adhering to the summary inquiry procedure mandated by the Act.

16] The Petitioner vehemently disputes the validity of the standalone bank guarantees cited by the Respondent. They claim that the Respondent failed to follow the specific guidelines for enforcing these guarantees and attempted to circumvent the Petitioner's rights. Crucially, the Petitioner states that they never consented to keep the guarantees active when the original loan facilities were restructured or rescheduled for the principal borrower. They accuse the Respondent of deliberately suppressing vital documents from the court, including letters that would prove the facilities were indeed rescheduled and that arbitrary penal interest was being charged.

17] Lastly, the Petitioner highlights massive discrepancies and arbitrary calculations regarding the actual debt and interest claimed in the Decree Nisi. They point out that the capital sum and the computed interest lacks a clear basis and conflict with the Respondent's own documents.

18] I now consider the merits of this application. It is apparent that the Plaintiff, a licensed commercial bank and a “Lending Institution” within the meaning of the Debt Recovery (Special Provisions) Act No. 2 of 1990, instituted proceedings

to recover a sum exceeding Rs. 110 million from the 1st Defendant, the principal debtor, and the 2nd Defendant, the guarantor.

19] At the lower court, the matter went ex parte against the 1st Defendant. Following the entry of the Decree Nisi, the 2nd Defendant sought to set it aside; however, the learned Additional District Judge dismissed the application on the basis that no prima facie sustainable defence had been disclosed, and accordingly made the Decree Nisi absolute. It is clear that the 2nd Defendant initially invoked appellate jurisdiction before the Civil Appellate High Court, that application was subsequently withdrawn, and proceedings were instituted by way of Restitutio in Integrum and Revision. The Plaintiff objected this application, relying on established authority to argue that once a Decree Nisi is made absolute, the appropriate remedy lies in a Final Appeal under the Civil Procedure Code, thereby precluding recourses to revisionary jurisdiction and Restitutio in Integrum.

20] The present application for Revision and Restitutio in Integrum is filed before the Court of Appeal by the Petitioner–Guarantor (2nd Defendant), seeking to set aside the Order of the District Court dated 02/11/2023. By that Order, the learned District Judge dismissed the Petitioner's application for leave to appear and show cause and proceeded to make the Decree Nisi absolute in a debt recovery action instituted by Nations Trust Bank PLC. The Petitioner stood as a guarantor for three separate facilities granted to the 1st Defendant (the principal borrower, who failed to appear), the Respondent Bank neither furnished proper accounts nor issued valid demands in terms of the guarantees prior to initiating proceedings.

21] Basically, the Petitioner contends that the learned Judge's interpretation and application of Section 6(2) of the Debt Recovery (Special Provisions) Act No. 02 of 1990 is wrong as the Judge failed to consider the three distinct and independent limbs under subsections 6(2)(a), (b), and (c), which respectively permit leave upon payment into court, the furnishing of security, or upon disclosing a prima facie sustainable defence. Instead, the Judge is alleged to have consolidated these provisions and confined his analysis solely to Section 6(2)(c), thereby denying the Petitioner the opportunity to obtain conditional leave

under subsections (a) or (b), despite the Respondent Bank itself conceding the availability of such alternatives.

22] When, considering the Plaintiff Bank has not furnished proper accounts to the court, X13, X14, X15, X17 and X18 accounts are provided in line with section 90C of the Evidence Ordinance.

23] It is to be noted that in establishing the debt, the Plaintiff relied on certified bank statements admissible under section 90C of the Evidence Ordinance as prima facie proof of the entries contained therein. Section 90C states as follows;

> *"Subject to the provisions of this Chapter a certified copy of any entry in a banker's book shall in all legal proceedings be received as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions, and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise."*

24] Instead of a mere assertion that no contrary has been proved by the Petitioner, the accounts are not proper. In ***Kiran Atapattu v. Pan Asia Bank Ltd*** [2005] 2 Sri LR 276 at 281, Wimalachandra J. stated that;

> *"In terms of Section 90(c) of the Evidence Ordinance the only way of proving entries in a banker's book is by either producing the originals or certified copies of the entries thereon."*

25] In this case, the person who has the original tendered certified copies under 90A of the Evidence Ordinance would suffice for proof of the debt. In considering section 90 and section 63 of the Evidence Ordinance, His Lordship Preethi Padman Surasena J (As he then was) in ***Chandra Gunasekera vs People's Bank and Others***, SC Appeal (CHC) No. 43/2012, Decided on: 11/10/2019, held;

> *"For the foregoing reasons, I am of the opinion that the remaining current balance of the loan account pertaining to the case at hand could be proved by the document P 9(a) as secondary evidence of the ledgers maintained by*

the Plaintiff Bank with regard to the loan relevant to this case, both as a certified copy falling under section 63(1) and as a copy falling under section 63(3). Thus, I am of the opinion that the learned Provincial High Court Judge is correct when he accepted the statement of accounts produced marked P 9(a) as proof of the fact that a sum of money was due to the plaintiff from the said Wang Lanka Apparels (Pvt) Ltd."

26] Thus, we are of the view that the debt has been proved by producing certified copies according to the law.

27] The Petitioner contended that a demand has not been made for payment. It is seen that by X19 and X20, letters of demand have been sent by registered post to the Petitioner, and those demands were not returned or the Petitioner had not disputed. Thus, the sum/arrears to be paid cannot be agitated in the court, when confronted, if there was no allegation made on the receipt of the letter of demands. Thus, the court sees that the debt to be paid has been correctly ascertained and proved in the court.

28] I now consider the last point that the learned trial judge has misled in applying section 6(2) of the Debt Recovery Act. Section 6 (2) of DRA reads thus;

"The court shall upon the filing by the defendant of an application for leave to appear and show cause supported by affidavit which shall deal specifically with the plaintiffs claim and state clearly and concisely what the defence to the claim is and what facts are relied upon to support it, and after giving the defendant an opportunity of being heard, grant leave to appear and show cause against the decree nisi, either –

(a) upon the defendant paying into court the sum mentioned in the decree nisi, or

(b) upon the defendant furnishing such security as to the court may appear reasonable and sufficient for satisfying the sum mentioned in the decree nisi in the event of it being made absolute; or

(c) upon the court being satisfied on the contents of the affidavit, filed, that they disclose a defence which is prima facie sustainable and on such terms as to security, framing and recording of issues, or otherwise as the court thinks fit";

29] The Petitioner contended that these limbs were misconstrued by the learned trial judge. This position was considered in several apex court judgements. In ***Mahavidanage Simpson Kularatne v. People's Bank*** (SC Appeal No. 04/2015) SC Minutes dated 15/09/2020, the majority of the Supreme Court held;

"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."

Further, *"The Legislature in no uncertain terms has laid down the procedure to be followed for a defendant to show cause against a decree nisi and I see no reason to deviate from the said provisions or to disregard such provisions. The Act does not permit 'unconditional leave' to appear. Leave to appear is always subject to conditions. The least being furnishing security as the court thinks fit. As discussed earlier, the intention of the Legislature has to be fulfilled, and the purpose of the Act should not be brought to nought by a court relying on technical objections to defeat the very purpose of the Act."*

30] Moreover, in ***Seylan Bank PLC vs Mohamed Rasheed Mohamed Farook***, SC Appeal No. 237/2014, Decided on: 29/11/2021, Priyantha Jayawardena PC, J;

*"**If the court is not satisfied that the defendant has disclosed a prima facie sustainable defence, it has no jurisdiction to make an order under section 6(2)(c) of the said Act. In such an instance, the court should make an order either under sections 6(2)(a) or (b) of the said Act**. On the contrary, if the court is satisfied that the defendant has*

disclosed a prima facie sustainable defence, leave to appear and show cause against the decree nisi should be granted on the terms set out in section 6(2)(c) of the said Act…

Accordingly, the above section has cast a duty on the court to be satisfied that the defendant has disclosed a defence which is prima facie sustainable against the claim made by the plaintiff, prior to making an order under and in terms of the said section. It is pertinent to note that the words 'prima facie' has been qualified by the addition of the adjective 'sustainable'. ***Thus, the court should not only be satisfied that the defendant has a prima facie defence, but that the defence of the defendant is prima facie sustainable****. Accordingly, the court is required to consider whether the defence disclosed by the defendant* ***can be sustained at the conclusion of the trial****. If the court is not satisfied that the defendant has disclosed a prima facie sustainable defence, it has no jurisdiction to make an order under section 6(2)(c) of the said Act.* ***In such an instance, the court should make an order either under sections 6(2)(a) or (b) of the said Act****. On the contrary, if the court is satisfied that the defendant has disclosed a prima facie sustainable defence, leave to appear and show cause against the decree nisi should be granted on the terms set out in section 6(2)(c) of the said Act."* [Emphasis is added]

31] Further, in ***Indian Overseas Bank vs Saffany Chandrasekera***, SC Appeal No: 48/2021, Decided on: 23/01/2024, His Lordship Obeyesekere, J, noted as below;

"Logically speaking, a defendant who has defaulted on the credit facilities made available to him will generally not seek leave under paragraph (a) as this would require him to deposit the sum mentioned in the decree nisi. Similarly, an application for leave under paragraph (b) also would be a rare occurrence for the reason that the security must appear to the Court to be reasonable and sufficient to satisfy the sum mentioned in the decree nisi, should it be made absolute. This however was one such case where an application under paragraph (b) could have been made. Thus, on most occasions, leave would be sought under paragraph (c) on the basis that the

application of the defendant supported by an affidavit discloses a prima facie sustainable defence. I am therefore of the view that while it is desirable, it is not mandatory for a defendant to express a choice with regard to the paragraph in terms of which he or she seeks leave…

The question that I must answer is did the learned District Judge err in law when he failed to do so? In searching for the answer to that question, I shall bear in mind the rationale for the introduction of the Act and its provisions and the fact that the Act was meant to expedite the recovery of debts owed by customers to a lending institution. On the face of it, the provisions of the Act are lender friendly and accords with its objective. However, that does not mean that it is a piece of legislation that is heavily weighted in favour of the lender, for there are provisions that amply safeguard the rights of the debtor, as well. In the application of the Act, it is the duty of the Court to strike the correct balance between the conflicting interests of the parties. I shall examine in that light the rationale for the requirement to deposit security in order to proceed with the challenge to the decree nisi.

The rationale is simple. If the defendant makes out a prima facie sustainable defence, the discretion with regard to the terms on which leave should be granted is with the learned District Judge. ***However, where the defendant fails to make out a prima facie sustainable defence, the Act mandates that security be deposited, whether it be money or otherwise, and that it be sufficient to satisfy the sum of money specified in the decree nisi****. The intention of the Legislature in requiring a security is therefore to ensure that if the defendant fails in his or her bid to prevent the decree nisi being made absolute, the plaintiff must be able to immediately access the security, with Section 13 of the Act providing that a decree absolute shall be deemed to be a writ of execution issued to the fiscal in terms of Section 223(3) of the Civil Procedure Code."*

32] A year ago, in ***Chemisales Holding (Pvt) Ltd. Vs People's Bank,*** SC/APPEAL/148/2019, Decided on: 03/04/2025, His Lordship Samayawardhena, J., considered the above legal provision and concluded;

"If the ***Court decides that the defence is not prima facie sustainable, the Court cannot make the decree nisi absolute****. In such circumstances, the Court cannot act under section 6(2)(c) but* ***shall proceed under section 6(2)(a) and allow the defendant to appear and show cause by depositing the entire sum mentioned in the decree nisi.*** *However,* ***depending on the nature of the defence, the Court may proceed under section 6(2)(b) and allow the defendant to appear and show cause by furnishing security****. If the Court proceeds under section 6(2)(b), the security ordered shall not be nominal but "reasonable and sufficient for satisfying the sum mentioned in the decree nisi in the event of it being made absolute". This conclusion that the Court cannot immediately make the decree nisi absolute, even if the defence is not prima facie sustainable, is justified on several grounds.*

In the first place, what section 6(2) states is that "The court shall upon the filing of the defendant of an application for leave to appear and show cause supported by affidavit....grant leave to appear and show cause against the decree nisi", by directing the defendant (a) to deposit the entire sum; or (b) to furnish reasonable and sufficient security; or (c) to furnish security or otherwise as the Court thinks fit. ***The District Judge shall select one of the three alternatives****. Making the decree nisi absolute is not one of them."* [Emphasis is added]

33] It is clear that the learned trial judge has not considered, after deciding that the Defendant had not disclosed a prima facie sustainable defence, whether to apply sections 6(2) (a) or 6(2) b) of the Act. Thus, we hold that the P1, the impugned judgement, is not according to the law as illustrated by the above decisions.

34] I have considered the Interim Orders made by this court by order dated 18/02/2024, in issuing formal notices. In that, the court had considered the preliminary objections of the Plaintiff Bank, that the affidavit of the Petitioner is not in accordance with Section 183A of the Civil Procedure Code and the Petitioner had an alternative remedy under Section 753 of the Civil Procedure

Code. Thus, this court does not want to revisit those objections in this final order, as they have already been addressed.

35] However, in line with the above decisions and acting under section 6(2)(a) of the Debt Recovery (Special Provisions) Act, No. 2 of 1990, we set aside the Impugned Order marked P1 dated 18/02/2024 and Order the 2nd Defendant-Petitioner to deposit full sum mentioned in the Decree Nisi as the said Petitioner failed to show the prima facie case as mentioned in 6(2)(c) of the said Act and defend the case in the lower court, at the registry of the District Court of Colombo for the DC Case No. DDR/71/2022, within 6 weeks from today. The Petitioner takes notice of this deadline. If the Petitioner fails to deposit the said sum, the learned District Judge is directed to make an Order Nisi Absolute forthwith.

36] Thus, this application is allowed subject to depositing the full amount of Decree Nisi at the District Court Registry within six weeks from today and allowing the Petitioner to defend the case. The parties will bear the costs of this application.

JUDGE OF THE COURT OF APPEAL

R. GURUSINGHE J.

I agree

JUDGE OF THE COURT OF APPEAL