

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

In the matter of an application for mandamus
in the nature of Writs of Mandamus, Certiorari
and Prohibition under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

CA-WRT-113/2024

Kalutota Financial Services (Private) Limited
No. 49, Hudson road, Colombo 03.

Petitioner

Vs.

1. Parakramasinghe Nishanthi Udayanganee
2. Ilandari dewage Lochana Kavindi
3. Ilandari Dewage Malisha nethmina
Kumarasiri
4. Ilandari Dewage Amarasha Induwari

All of the 1st 4th Respondents at:

Priyanjana Hotel, Hingurana
No. 89/1, ' Pudgalika Niwasa', Higurana

5. Hon. W. Iranganie Perra
Chairperson Debt Conciliation Board

6. Hon. W.C. Pushpamalee
Member
Debt Conciliation Board

7. Hon. Kusum Pathirna
Member
Debt Conciliation Board
8. Hon. K.H. Premadasa
Member
Debt Conciliation Board
9. Hon. Bandula Ranjith
Member
Debt Conciliation Board
10. Hon. Piyasena Ranasinghe
Member
Debt Conciliation Board
11. Hon. Padma palihakkarara
Member
Debt Conciliation Board
12. Hon. Milton Marasinghe
Member
Debt Conciliation Board
13. Hon. Sarath Chandrasiri withana
Member
Debt Conciliation Board
14. Hon. Somapala Karunathilaka
Member
Debt Conciliation Board
15. Hon. N.G. D.S. Dayananda
Member
Debt Conciliation Board

05th to 15th Respondents at

Department of Debt Conciliation Board
No. 35A, Dr. N. M. Perera Mawatha
Colombo 08

16. Hon. (Dr) Wijedasa Rajapakshe
Minister of Justice, Prison Affairs and
Constitutional reforms
19, Sri Sangaraja Mawatha
Colombo 10.

17. M.N. Ranasinghe
Secretary
Minister of Justice, Prison Affairs and
Constitutional Reforms
19, Sri Sangaraja Mawatha
Colombo 10.

Respondents

Before : N. Bandula Karunarathna, P/CA, J.
B. Sasi Mahendran, J.

Counsel: Hejaaz Hizbullah with Chalana Perera for the Petitioner
Nisala Seniya Fernando for the 1st and 2nd Respondents.
Yothini Selvananthan, SC or the 16th and 17th Respondents

Argued On: 06.12.2024

Written

Submissions: 15.01.2025 (by the Petitioner)

On 03.01.2025 (by the 1st and 2nd Respondents)

Decided On: 28.01.2025

JUDGMENT

B. Sasi Mahendran, J.

The Petitioner instituted this application by petition dated 15.02.2024 seeking *inter alia* a writ of Certiorari to quash the proceedings before the Debt Conciliation Board application bearing No. 46470.

The relevant facts of this case are as follows:

The Petitioner states that the Petitioner is a company duly incorporated in terms of the laws of Sri Lanka which is engaged in the business of providing financing facilities for the purchase of motor vehicles.

According to the Petitioner, the Petitioner granted finance leasing facility to the 1st Respondent by Memorandum of Agreement dated 25.05.2011 for a sum of Rs. 1,100,000/- for the hire purchase of the motor vehicle bearing registration No. EP HG-7472. The Petitioner states that the said motor vehicle was seized by the Petitioner on or about 12.10.2012 due to the 1st Respondent defaulting on the payment of her installments.

The Petitioner further states that at this point, one Ilandari Dewage Sarath Kumarasiri who is the husband of the 1st Respondent approached the Petitioner and offered to transfer a property owned by him in terms of Deed of Gift bearing No. 13 dated 07th June 2000

attested by M.G.A. Kumara, Notary Public to the Petitioner as additional security subject to the Petitioner returning the motor vehicle back to the 1st Respondent. Thereafter, the said property was transferred to the Petitioner Company by Deed of Transfer bearing No. 269 dated 30th October 2012 attested by W.D.C. Premajyantha, Notary Public.

The Petitioner states that furthermore, a sum of Rs. 1,000,000/- was advanced to him to effect repairs to the said motor vehicle after such Deed of Transfer. However, the said motor vehicle was seized by the Petitioner due to the non-payment of the lease rentals. Thereafter, the said Ilandari Dewage Sarath Kumarasiri engaged in discussions with the Petitioner after which the possession of the property was handed over to the Petitioner subject to the payment of Rs. 4,000,000/- on 15th May 2023 and a receipt was issued by the said Ilandari Dewage Sarath Kumarasiri.

The Petitioner further states that the said Ilandari Dewage Sarath Kumarasiri passed away in or around November 2023 and the funeral was held at the property in question as requested by the 1st Respondent.

The Petitioner states that on 8th January 2024, when several workers of the Petitioner Company visited the said property to clean it, several officers of the Damana Police Station visited the said property along with one Ilandari Dewage Pathma Kumarasiri, the brother-in-law of the 1st Respondent. The Petitioner further states that when the workers were requested to come to the Damana Police Station, they were arrested without any inquiry or informing them of the complaint against them. Thereafter, they were produced before the Learned Magistrate of Ampara in the case bearing No. B/5038/24 and later they were enlarged on bail.

The Petitioner avers that being aggrieved by the said Magistrate Court of Ampara Case bearing No. B/5038/24, the Petitioner and several other workers instituted an application bearing No. CA/WRIT/28/2024 by petition dated 12.01.2024. The Petitioner further states

that the Court granted an interim order dated 16.01.2024 staying the further proceedings of the Magistrate Court of Ampara Case bearing No. B/5038/24.

The Petitioner states that due to the interference and unlawful conduct of Certain Police Officers in the application bearing No. CA/WRIT/28/2024, the employees of the Petitioner had to leave the property in question and the Petitioner became aware that the 1st Respondent and several others have moved into the said property.

The Petitioner states that, on 9th February 2024 the Petitioner received a Notice on Creditor dated 1st February 2024 under Section 19A (2) of the Debt Conciliation Board Ordinance.

The Petitioner further states that the said Debt Conciliation Board application *inter alia* purports that, the 1st to 4th Respondents who are the heirs of the said Ilandari Dewage Sarath Kumarasiri has obtained a secured debt of Rs. 1,000,000/- from the Petitioner and that it is the Deed marked as P4 that is relevant to the said transaction.

The Petitioner contends that the Deed marked P4 is prescribed and that such deed is not conditional.

In this context, the Petitioner has invoked the writ jurisdiction of this Court seeking *inter alia* a writ of Certiorari to quash the proceedings before the Debt Conciliation Board on the basis that they have no jurisdiction to hear the matter.

On the other hand, the Respondents raise the preliminary objections that the Petitioner has failed to exhaust all the alternative remedies.

It is true that the said Deed of Transfer was executed 12 years ago. The 1st Respondent has gone to the Debt Conciliation Board on the footing that they are in the continuous possession of the property which was admitted by the Petitioner in paragraph 4 (i) of the

petition. According to the Petitioner, the possession of the property was handed over to them only on 15th May 2023.

According to Section 19 A of the Debt Conciliation Board Ordinance, states that the debtor who is in possession of the property which was transferred could make an application before the Debt Conciliation Board. The fact who is in possession should be decided based on the evidence. Time and time again, it has often been held that the writ jurisdiction is not the appropriate forum when matters of fact are in dispute. This is buttressed by the following authorities.

In Thajudeen v. Sri Lanka Tea Board and Another 1981 (2) SLR 471, His Lordship Ranasinghe J (as he then was) held:

“That the remedy by way of an application for a Writ is not a proper substitute for a remedy by way of a suit, specially where facts are in dispute and in order to get at the truth, it is necessary that the questions should be canvassed in a suit where the parties would have ample opportunity of examining their witnesses and the Court would be better able to judge which version is correct, has been laid down in the Indian cases of: Ghosh v. Damodar Valley Corporation, Parraju v. General Manager B. N. Rly.”

This judgment was referred to with approval in the case of Dr. Puvanendran v. Premasiri [2009] 2 SLR 107 by Her Ladyship Shiranee Tilakawardane J (with Their Lordships Amaratunga J and Marsoof J agreeing).

Further, in Public Interest Law Foundation v. Central Environmental Authority CA WRIT, 527/2015 decided on 24.02.2020 His Lordship Mahinda Samayawardhena J. held,

“This Court in the exercise of writ jurisdiction cannot decide on administrative decisions where the facts involved are in dispute. Simply stated, when major facts are in dispute writ will not lie.....This Court cannot decide whether the Petitioner

or the Respondents are correct on this issue. That is outside the purview of this Court. When this main ground upon which the Petitioner's whole case is based is in dispute, can this case be maintained? I think not."

In the instant application, it is disputed as to who is in possession of the property in dispute. Therefore, as established above, a writ cannot be issued by this Court in this instant.

On the other hand, if the Board is satisfied that they are in continuous possession, the Board should entertain the application of the debtor.

Therefore, we hold that the Petitioner has an alternative remedy available to canvass the matter before the Board and establish that they are in possession of the property to defeat the application of the debtor.

For the above-said reasons, we dismiss the application.

No order for cost.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna, J (P/CA)

I AGREE

PRESIDENT OF THE COURT OF APPEAL