

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

Case No: CA/WRT/0684/2023

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

Lucky Tea Private Limited,
No. 16 B, Sri Hemakanda Mawatha,
Bataganwila, Galle

Petitioner

Vs.

1. Central Bank of Sri Lanka
PO Box 590,
Colombo 01.
2. Dr. P. Nandalal Weerasinghe,
Governor / Chairman
3. Mr. Sanjeewa Jayawardene PC,
- 3a. Rajeev Amarasuriya
Member
4. Mr. Nihal Fonseka
Member

5. Dr. Ravi Rathnayaka
Member

6. Anushka Wijesinghe
Member

7. Dr. Dushni Weerakoon
Member

8. Prof. Priyanga Dunusinghe
Member

9. Mrs. T. M. J. Y. P. Fernando
Member

9a. Mr. Vish Govindasamy

10. Mrs. K. M. A. N. Daulagala
Member

2nd to the 10th Respondents are at
PO Box 590, Colombo 01.

11. Bank of Ceylon
No. 01, Bank of Ceylon Mawatha,
Colombo 01.

12. Ronald C. Perera
Chairman

12a. Mr. Kavinda De Zoysa
Chairman

13.R. M. Priyantha Rathnayaka
Director

13a.Dr. M. K. C. Senanayaka
Director

14. G. A. Chandrasiri
Director

14a.Jahann Ismail
Director

15.Kithsiri Liyanage
Director

15a.Jayamin Pelpola
Director

16.Naresha Abeyesekera
Director

17.Janaki Senanayake Siriwardane
Secretary to the Board of directors,

12th to the 17th Respondents is at
No. 01, Bank of Ceylon Mawatha,
Colombo 01.

18.G. A. Thilini Nimeshika
Thawalama Bank of Ceylon
Branch,
Thawalama

19.H. M. T. Karunarathna
No. 183/3, Wihara Mawatha,
Kolonnawa.

Respondents

Before : Hon. Rohantha Abeysuriya PC, J.(P/CA)
: Hon. K. Priyantha Fernando, J. (CA)

Counsel : Vijith Singh instructed by Sampath
Pushpakumara for the Petitioner.

Vikum de Abrew, ASG with Mihiri De Alwis,
SSC for the 1st, 2nd and 4th- 10th Respondents.

Chandimal Mendis with Ashiq Hassim, Aneeraz
Samahan and Ashan de Alwis for the 11th- 18th
Respondents instructed by S. Nanayakkara.

Written Submissions on : 31.08.2026 for the 11th- 18th Respondents.

31.08.2026 for the Petitioner.

Supported on : 02.07.2026

Decided on : 18.09.2026

K. Priyantha Fernando, J. (CA)

1. The Petitioner, namely Lucky Tea Private Limited instituted this Application by Petition dated 06.11.2023 seeking primarily to stay the auction of the mortgaged property which was then scheduled to be held on 08.11.2023 by the 11th Respondent - Bank of Ceylon.
2. As borne out by Journal Entry dated 07.11.2023, the Petition was supported *ex parte* and a stay order has been obtained staying the auction. The 1st to 2nd, 4th to 10th and 11th to 18th Respondents thereafter filed a Statement of Objections praying for the dismissal of the Petition on the basis of the several Preliminary Objections raised.

FACTUAL MATRIX:

3. The matters detailed in the Petition evince that the Petitioner has obtained loan facilities from the Bank and failed to settle such loan facilities, and consequently, the Bank has resorted to the procedure and mechanism provided by law and auction the property pledged as collateral [vide A6, A7, A8 and A9] and recover the outstanding loan arrears and interest.
4. As per paragraphs 18 to 29 of the Petition, as well as in prayer (b) of the Petition, relief is sought under the Central Bank Circular marked A13 (a) to (c) and an order to compel the Central Bank and the 11th Respondent Bank to reschedule the loans and reduce the interest payable.

ARGUMENTS ADVANCED BY THE PETITIONER:

5. The main argument of the Petitioner is that the Respondents have failed to grant concessions as per the Circulars No. 02 of 2022 and No. 01 of 2023.

Secondly, it was contended that the 11th Respondent Bank has failed to give proper notice under Section 21 of the Bank of Ceylon Ordinance, No. 53 of 1938.

6. In response to the contention that the instant matter is of contractual nature, and hence not amenable to writ jurisdiction, the Petitioner referred to the case of Wickremasinghe v. Ceylon Electricity Board and Another [1997] 2 Sri L. R. 377, in which His Lordship Dr. Ranaraja, J. stated as follows:

“The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by a superior Court for the performance of a public legal duty. It is only granted to compel the performance of duties of a public nature, and not merely of private character, that is to say, for the enforcement of a mere private right, stemming from a contract of the parties. - Ratnayaka v. Perera...(at page 381) The petitioner has failed to satisfy this Court that he has a statutory right to an extension of services under the 1st respondent.”

PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENTS:

- i. **The subject matter being one which relates to a commercial transaction is not amenable to the jurisdiction of this Court**

The 11th to 18th Respondents argued that the impugned conduct of the Respondent Bank is merely the mechanism provided to it by law for the recovery of the loan arrears via the auction of the property. The Respondents directed the attention of this Court to the case of K. D. Gunapala v Bank of Ceylon and another CA/WRT/955/2006 decided on 07.08.2013, wherein His Lordship H.N.J. Perera J., (as he was then) with Justice Anil Gooneratne agreeing, held thus, *“The dispute is in relation to the amount recoverable from the Petitioner on the mortgage*

bonds executed and this Court is not inclined to interfere with the decision of the Board of Directors of the Respondent Bank”

Assuming without deciding that the Petitioner is aggrieved by the Bank not acceding to a reduction of the interest payable on the loans/facilities, such is purely a private commercial matter which should be agitated in the appropriate forum of law.

ii. The Petitioner has not come to Court with clean hands and has further abused the process of Court

It was the Respondent’s contention that the Petitioners have suppressed from this Court the fact that loan installments were not paid from 2019 to 2023. Additionally, it is the Respondent’s submission that the 11th Respondent bank even gave the Petitioner several concessions for the facilities prior to categorizing them as Non-Performing Loans (NPL). The Respondents referred to the case of Agarapatana Plantations Ltd and Others v De Silva and Others CA/WRT/0143/2021 decided on 09.08.2022.

7. The Petitioner has suppressed that it had not paid a single installment whatsoever from 2019-2023 and failed to pay at least a cent in order to regularize the payments due to the 11th respondent Bank. (vide paragraph 1 (III) of the Objections). As a result, the said loan facilities had been categorized as Non-Performing Loans (NPL) on 13.08.2019. even prior to such categorization, the 11th Respondent Bank had rescheduled two facilities and approved several concessions for the facilities which had been categorized as NPL including a 25% waive off interest (vide paragraph 1 (XI) of the Objections). This amounts to suppression of material facts by the Petitioner and it is clear that the Petitioner has failed to come before Court with ‘clean hands’ and failed to file material documents whilst suppressing documents that were unfavourable to it.

8. The Respondents have drawn the attention of the Court to the *mala fide* conduct of the Petitioner. Several years after the execution of the Mortgage Bonds viz., A6 in 2010, A7 in 2011, A8 in 2014 and A9 in 2018, the Petitioner belatedly state by the petition dated 06.11.2023 that, “...since the said mortgage bonds contain unfair terms and conditions, the petitioner denies the contents of the said mortgage bonds”. This assertion is clearly an abuse of the process of Court.
9. Furthermore, for *mala fide* reasons and to suppress the real facts, the Petitioner has not named the Joint/Co-Mortgagor/Co-borrower on Mortgage Bonds A6, A7 and A8, namely Maradhana Gamage Lakshman, as a Petitioner to this Application. This amounts to an act of willful *mala fide* since said Lakshman is the Chairman/managing Director and Company Secretary of the Petitioner Company and the letters marked as A14 and A15, sent a few weeks prior to the filing of this Application, were written by him.
10. In this regard, the decision in the case of K.A.S. Auto International (Pvt) Ltd and Another v. Sampath Bank PLC and Another [2020] 2 Sri L. R. 112 is of much relevance wherein it was stated by His Lordship Samayawardhena J. as follows:

"In paragraph 12 of the Petition, the Petitioners accept the execution of P3, but in paragraph 26 deny P6 (Mortgage Bond) claiming it was fraudulently executed without their consent. The public auction, which was to be held on 14.08.2020 pursuant to the said resolution, was halted by an interim order of this Court... It is interesting to note that both directors of the 1st Petitioner company (the 2nd Petitioner and his wife) have signed the above documents, almost on each and every page, and they do not say their signatures were forged. The 2nd Petitioner's position is that the 14th Respondent, who is the present Manager of Sampath Bank, and the Attorney-at-Law who executed the secondary Mortgage Bond P6, got his and his wife's signatures on several unfilled pre-printed formats and blank papers and later manufactured the documents... The Petitioners would appreciate that if the said documents tendered by the

Bank with its statement of Objections were in fact consciously signed by them and they thereafter defaulted on the payments, they cannot complain about the Board resolution passed... This leads me to the irresistible conclusion that major facts are in dispute and therefore the writ court lacks jurisdiction to pass judgment on this matter. The writ court is not a trial court to decide on the veracity of the conflicting assertions of rival parties..."

iii. ***Laches* / undue delay**

The Respondents submitted that the Petitioner only took steps 2 days prior to the date on which the auction was scheduled for (08.11.2023) as the Petitioner filed papers before this Court only on 06.11.2023. It was revealed to the Court that the Final Notice had been sent by the 11th Respondent on 26.09.2022 and prior to that on 11.03.2019 the Bank had rescheduled 2 loan facilities obtained by the Petitioner. The Board Resolution had been passed on 09.05.2023 and same was informed on 14.06.2023.

The auction which was scheduled on 08.11.2023 had been communicated to the Petitioner on 13.10.2023. It is clear that since the final notice, the Petitioner has slept on his rights for over a year without taking any remedial action. The Petitioner has suddenly awakened only two days prior to the scheduled auction and come before the Court in the eleventh hour resulting staying of the auction for more than 3 years by now. Thus, I hold that the Petitioner is guilty of clear *laches* and is not entitled to discretionary relief of writ.

iv. **Relief sought is untenable/ futility of application**

v. **The application is made in contravention to the Court of Appeal Rules**

- vi. **Unnecessary parties have been added while necessary parties are not before this Court**

The Respondents submitted that by refraining from naming Maradana Gamage Lakshman as a Petitioner to the instant application, the Petitioner Company has suppressed that Maradana Gamage Lakshman being a Co-borrower/mortgagor, Chairman, Managing Director and Company Secretary had received the notices served by the bank (marked A1, A6 to A8). However, in the same application where the Co-Mortgagor/ Borrower has not been named a party, the individual members of the Central Bank of Sri Lanka have been named as parties, despite them not being directly affected by the relief prayed for. This amounts to not only a clear abuse of process but a failure on the part of the Petitioner Company to have named its Co-Borrower/Mortgagor as a party to this case.

11. An overview of the current legal position was considered by Justice Gopallawa in the case of Arachchikattuwa Multi-Purpose Cooperative Society Ltd. v Wasantha Gunasekara and others CA/WRT/803/2024 decided on 04.04.2025 and reads as follows:

“In The Ark Universal (Private) Limited v M. Umamagal, The Divisional Secretary Marintimepattu and 2 others, 13 this Court (per Corea J.) has provided a very useful account on the current status of the law regarding necessary parties in writ applications in the following manner;

“A necessary party to a Writ Application was defined by Gamini Amaratunga, J. in Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thera and 4 others (2011) 2 SLR 258;

- 1) “The first rule regarding the necessary parties to an application for a Writ of Certiorari is that the person or authority whose*

decision or exercise of power is sought to be quashed should be made a Respondent to the application.

2) The next rule is that those who would be affected by the outcome of the Writ application should be made Respondents to the application.

3) A necessary party to an application for a Writ of Mandamus is the officer or the authority who has the power vested by law to perform the act or the duty sought to be enforced by the Writ of Mandamus. All persons who would be affected by the issue of Mandamus also shall be made Respondents to the application.”

In Rawaya Publishers and another v. Wijeyadasa Rajapaksa (2001) 3 SLR 213 it was held,

*“In the context of writ applications, a necessary party is one without whom no order can be effectively made. A **proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings... If they are not made parties then the petition can be dismissed in limine.** It has also been held that person vitality affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide Prabodh Dharma v. State of Uttar Pradesh AIR 1985 – SC 167 also see Encyclopedia of Writ By P.M. Bakshi).”* (the emphasis was added)

12. The issue of failing to name necessary parties was furthermore considered in the case of Agarapatana Plantations Ltd and Others v De Silva and Others CA/WRT/0143/2021 decided on 09.08.2022. Justice Corea held as follows:

*“It is clear that the party that would be **most affected** would be the estate workers, and accordingly, I find that the Petitioners have failed*

to add the workers' representatives or the workers to this application. Beneficiaries of the wage increase of Rs. 1000 are the estate workers who have been given a pledge as submitted by the Petitioners through the manifesto of the candidate of the President-elect (who are in the regional plantation companies as well as small holdings). Hence the Respondents' contention that the estate workers are not represented in this application has merit.”(the emphasis was added)

13. I am of the view that the Co-Borrower/Mortgagor is a party “***in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings...***”. Thus, the Petitioner's failure to name necessary parties, in the instant matter the necessary party being the Co-Borrower/Mortgagor, Maradana Gamage Lakshman (Chairman, Managing Director and Company Secretary of the Petitioner Company) who received the notices served by the bank (marked A1, A6 to A8), is fatal to this application.

14. Even though this Court has upheld the objections raised by the Respondents and this application has to fail, for completeness, I will now consider the main arguments of the Petitioner.

HAS THE BANK FAILED TO GIVE PROPER NOTICE UNDER SECTION 21 OF THE BANK OF CEYLON ORDINANCE?

15. The Petitioner has drawn the attention of the Court to the letter dated 14.06.2023 sent by the 11th Respondent Bank annexing the paper publications relating to the notice of resolution to Maradhana Gamage Lakshman [vide A16 and A17(a) to (d)]. It was contended that:

- (a) As per section 21 of the Bank of Ceylon Act, the notice shall be served on the borrower and in this case the borrower is the petitioner company and not said Lakshman.

(b) The 1st Respondent has given notice to the director of the petitioner company and failed to give any notice to the petitioner, in terms of section 21 of the Act.

(c) Notice to Maradhana Gamage Lakshman is not a notice given to the borrower.

16. Section 21 of the Bank of Ceylon Ordinance, No. 53 of 1938 provides for notice of resolution of mortgaged property and it reads as follows:

“Notice of every resolution under section 19 authorizing the sale of any property shall be published in addition to the Gazette, in three daily newspapers in Sinhala, Tamil and English respectively, and copies of such notice shall be served on the borrower, if he is alive.”

17. As per paragraphs 31 to 33 and 36 to 39 of the Petition, the predicate relief has been prayed for on the basis that Notice was given to Maradhana Gamage Lakshman and not to the Company and therefore there was non-compliance with Sections 21 and 22 of the Bank of Ceylon Ordinance. This was answered by the 11th Respondent by stating that the Bank has complied with the provisions of Sections 21 and 22 of the Bank of Ceylon Ordinance.

18. It was further revealed that, Gamage Lakshman is not a stranger to the Petitioner Company but in fact, is a co-borrower/mortgagor (vide A6, A7 and A8), Chairman and Managing Director of the Petitioner (vide A6, A7 and A8), Shareholder (vide A1) and the author of A14 and A15. Moreover, he is also the Company Secretary of the Petitioner Company (vide A1).

19. The Petitioner has admitted the contents of the Letters of Demand dated 15.08.2019 (A10) and 08.06.2022 (A11) along with Final Notice dated 26.09.2012 (A12). Furthermore, the Petitioner has admitted receipt of Notices under Sections 21 (A16) and Section 22 (A18) dated 14.06.2023 and 13.10.2023 respectively. In fact, the Petitioner has responded to the Section 22 Notice of the

Bank dated 13.10.2023 (A18) by its letter dated 18.10.2023 (A15) and appealed the Bank seeking a suspension of the Auction scheduled for 08.11.2023.

20. It is important to note that A15 is signed by Maradana Gamage Lakshman who was writing to the Bank in respect of matters stated therein. Moreover, A15 makes reference in the caption thereto to Loan Account Nos. 76893459 and 84017575, referred to in the letter of the 11th Respondent (A10), which the Petitioner has admitted receipt of. Thus, the conduct of the Petitioner and Maradana Gamage Lakshman who are both Borrowers/Mortgagors as seen by A6, A7 and A8 is willfully calculated to mislead the Court.

21. It is seen that the Petitioner having caused A15 to be dispatched and having had the benefit of the loan facilities from the year 2010 (A6) contradictorily belatedly now denies the very Mortgage Bonds wherein the said Lakshman is a Mortgagor and Borrower. In the case of K.A.S. Auto International (Pvt) Ltd and Another v. Sampath Bank PLC [2020] 2 Sri L. R. 112, it was held that subject to limited exceptions, as a general rule, if a signatory of a document is an adult who is neither illiterate nor blind, he shall take full responsibility for the contents thereof. He cannot disavow or disown the document he admittedly signed upon realizing it is unfavourable to him.

22. In any event, according to the dicta in Zubair v. Bank of Ceylon [2000] 2 Sri L. R. 187, it has been held that: *"In debt recovery matters, it would not be correct for the Court to hold against the intention of the legislature on technicalities"*.

CAN THE CENTRAL BANK INTERFERE WITH THE INTERNAL PROCESSES OF THE 11TH RESPONDENT BANK?

23. As a regulatory body, the Central Bank cannot interfere with the internal processes of the 11th Respondent Bank of Ceylon in regard to loan facilities

defaulted by the Petitioner and the recovery mechanism which the Bank of Ceylon Ordinance, No. 53 of 1938 expressly provides for.

24. It was the Petitioner's position that as per the Circulars No. 01 of 2020 and No. 01 of 2023, licensed banks are required to provide assistance and reschedule of the loans but no reschedule of loan was considered by the 11th Respondent. The Petitioner discussed the reschedule of the loans with the 18th Respondent branch manager and informed that he will do the needful after discussing with the head office.
25. As per the said Circular, the 11th Respondent is bound to grant concession to the Petitioner. It was submitted that since the Petitioner is a good customer, even after the publication of the resolution, representatives of the Petitioner discussed with the 18th Respondent and the Petitioner was assured that the loan facility will be rescheduled with interest reductions. The Petitioner wrote two letters to the 11th Respondent Bank dated 22.08.2023 and 18.10.2023 (vide A14 and A15) requesting to reschedule the loans; however, no reply has been received. The representatives of the Bank informed the Petitioner that they will instead cancel the auction and reschedule the loan and that the letter containing such details would be issued on 01.11.2023. The 11th Respondent had failed to issue such letter, contrary to their own undertaking given to the Petitioner. It was submitted that the 11th Respondent and 12th to 17th Respondents have no right to pass the resolution without granting reliefs under the Central Bank Circulars and hold the auction without rescheduling the loans.
26. The 11th to 18th respondents have explained that even though the 1st Respondent approved concessions under circular No. 01 of 2020, the Petitioner has not responded to the proposed concessions as evinced from documents X3(a) and X3(b). Thus, no official request has been made for concessions and the Petitioner has not indicated its repayment capacity to make an official request as per the circular.

27.As evinced from document X3(a), the 18th respondent has written to the Petitioner upon obtaining approval from the 11th respondent for the proposed concessions, but it was the Petitioner that had not demonstrated any interest and had not responded with regard to the proposed concessions.

28.Moreover, it was revealed that as per the very document annexed by the Petitioner, its application and eligibility was contingent only 'Upon a written request being made by the borrower on or before 31.01.2020...'. No such written request has been made by the Petitioner nor briefed to this Court by the Petitioner. It is seen that the Petitioner has admitted liability for the outstanding amounts in the letters marked as A14 and A15 and is now estopped from denying liability and hence cannot maintain this application.

IS THE 19TH RESPONDENT LICENSED BY THE PARTICULAR PRADESHIYA SABHA?

29.The Petitioner has called into question the ability of the 19th Respondent to conduct the statutory auction authorized by the Bank on the basis that the 19thRespondent is not licensed by the Thawalama Pradeshiya Sabha. This assertion has not been proved and the petitioner has not made the Thawalama Pradeshiya Sabha a party Respondent to this Application. Despite the fact that the Petitioner has instituted this Application belatedly questioning the facilities secured by Mortgage Bonds A6, A7, A8 and A9, the Petitioner has no authority to do so given the fact that the co-borrower/co-mortgagor - Maradana Gamage Lakshman is not a party to this Application nor has he filed an Affidavit. Thus, the entire Application is liable to be dismissed *in limine*.

30. For the foregoing reasons, the Petitioner is not entitled to any of the reliefs prayed for in the Petition and the application is dismissed with costs amounting to Rs. 100,000/- payable to the 11th Respondent Bank.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal