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

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

Thamara Damayanthi
Wickramasinghe,
No. 76/1, Dampe, Madapatha,
Piliyandala.

**CA (Writ) App. No. 796/2025**

**PETITIONER**

**Vs.**

1. Mr. Mahinda Pinidiya,
   Chairman,

2. Mr. G.P. Piyasena,
   Member,

3. Mr. K.P.D. Jayantha Goonerathna,
   Member,

   All Members of the Debt Conciliation Board,
   Department of Debt Conciliation Board,
   No. 45A, Crips Road, Galle.

4. G.G. Nandawathi,
   No. 90/1, Heili Road, Eththiligoda,
   Galle.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Viran Fernando with Sahiru Jasinghe and Shalika Bandara instructed by M. Chamali S. Ranathunga for the Petitioner.

Amasara Gajadeera, S.C. for the 1st to 3rd Respondents.

Iresh Senavirathne with Chalaka de Silva instructed by Gamali Amaratunga for the 4th Respondent.

**Argued on:** 11.02.2026

**Delivered on:** 30.04.2026

**Dr. D. F. H. Gunawardhana, J.,**

## Judgement

### Introduction

The Petitioner is the daughter of the 4th Respondent, and the 4th Respondent had executed a transfer deed in favour of the Petitioner, which is annexed to the Petition marked as **P3**, and executed on 04.03.2003.

However, subsequently in 2024, the 4th Respondent made an application to the Debt Conciliation Board in Galle, seeking a declaration that the said deed had been executed as security for a sum of Rs. 100,000/- (One Hundred Thousand Rupees) obtained by the 4th Respondent from the Petitioner.

Thereafter, the Debt Conciliation Board, having sent notices to the Petitioner on several occasions to multiple addresses, proceeded to determine the matter on the application of the 4th Respondent *ex parte*.

Subsequently, the Petitioner was notified of the said determination of the Debt Conciliation Board; therefore, the Petitioner moved to review its decision dated 28.04.2025, which is marked as **P5**. The Petitioner now challenges the same in this Application. In addition to that, the Petitioner challenges the orders marked as **P4** and **P7** made on the application to review **P5** as well.

Upon service of notice of this Application, the 4th Respondent filed her Objections, contending that the decision of the Debt Conciliation Board is justified in view of the factual circumstances of this case.

This matter was argued before me on 11.02.2026, and the following arguments were advanced; hence, this judgement.

**Arguments**

The first contention advanced by Mr. Fernando was that, in pursuing the application before the Debt Conciliation Board, the 4th Respondent failed to establish attendant circumstances; in particular, the impugned deed marked as **P3** annexed to the Petition, was executed in 2003, whereas the application to the Debt Conciliation Board by the 4th Respondent was made only in 2024. Therefore, the Debt Conciliation Board failed to properly consider this fact and proceeded to hold that the 4th Respondent had executed the said deed as far back as 2003 to secure a debt of Rs. 100,000/- (One Hundred Thousand Rupees), which is claimed to have been obtained by the 4th Respondent from the Petitioner.

It was further argued by Mr. Fernando that although the 4th Respondent claimed that the agreed rate of interest was 36% per annum, she failed to establish that she had paid such an exorbitant rate of interest to the Petitioner. Despite these matters, the Members of the Debt Conciliation Board, namely the 1st to 3rd Respondents, proceeded to hold that the deed impugned, which is the document marked **P3** was executed in 2003 to secure a debt and, therefore, is a sham.

In addition, he further argued that the Petitioner had continued to remain in possession throughout, which is also a factor that ought to have been considered by the Debt Conciliation Board and should hold against the 4th Respondent.

The next argument advanced by Mr. Fernando was that the Debt Conciliation Board proceeded with the inquiry on calling dates in the absence of the Petitioner. Accordingly, the rules of natural justice were not followed; therefore, the decision of the Debt Conciliation Board is tainted and is liable to be set aside.

Further, he argued that even after the determination, the Debt Conciliation Board was empowered to review its own decision, which it failed to do when an application was made in that behalf. Therefore, the second order made by the Debt Conciliation Board refusing to review its own decision is irrational and illegal.

However, it was argued by Mr. Senevirathne, the learned Counsel for the 4th Respondent, that the Petitioner cannot be heard to contend that the Debt Conciliation Board decided the matter *ex parte* in her absence, since there was an appearance by her at one stage; and also she was represented by an Attorney-at-Law. Subsequently, when she failed to appear, her Attorney-at-Law informed the Board that she was ill. Thereafter, the Debt Conciliation Board directed the Petitioner to submit a medical certificate, which she failed to do. In fact, thereafter, she failed to appear, and as the Debt Conciliation Board had no alternative, it proceeded with the inquiry. Therefore, once an appearance has been made, the Petitioner cannot be heard to say that the matter was decided *ex parte* against her.

The next argument advanced by Mr. Senevirathne is that the 4th Respondent continued to be in possession of the property in suit; therefore, she has not lost possession.

The third argument is that there was a huge discrepancy between the market value of the property at the time of the transfer in 2003 and what is stated as consideration on the face of the impugned deed. However, the Notary himself has stated in evidence that no consideration was passed in her presence.

The final argument was that the Petitioner had made this Application not *bona fide* but *mala fide*; therefore, this Application is liable to be dismissed.

**Issues for my consideration**

In that context, I will consider the arguments advanced by both parties in light of the evidence adduced before the Debt Conciliation Board. In addition to that, I will consider the propriety of the procedure adopted. Accordingly, it is my view that the following questions arise for my consideration;

(i) Whether the evidence placed before the Debt Conciliation Board warrant any order made in favour of the 4th Respondent.

(ii) Whether the Debt Conciliation Board decided *ex parte* against the Petitioner and finally decided the matter in favour of the 4th Respondent.

(iii) Whether the Debt Conciliation Board failed to review its own order and refused to consider and reconsider the evidence and revisit the order as marked **P5**.

Before considering the relevant questions raised above, I wish to examine the procedure laid down within the statutory framework of the Debt Conciliation Ordinance (hereinafter referred to as the 'Ordinance').

As argued by the counsel on both sides, the Debt Conciliation Board has been established for the purpose of settling disputes relating to debts, outside the courts as an alternative dispute resolution mechanism. Since court procedures are cumbersome and involve numerous procedural requirements, and as matters need to be disposed of expeditiously without incurring excessive costs and the use of other resources, including time, the Board has been set up under the Ordinance to resolve disputes arising between debtors and creditors.

**The three stages of proceedings**

Accordingly, the Ordinance provides a series of steps to be followed when a party claims that a dispute has arisen out of a debt. First, upon entertaining an application made under the Ordinance, the Board must make a preliminary determination as to whether a debt exists.[1]

For that purpose, once the application is received and entertained, the Board can issue notices to the respondents, who are basically the creditors, although it may be the other way around as well. Thereafter, once the respondent appears, if he does not admit that there is a debt existing between the parties, then the Board has to consider whether, in fact, there is a debt.

The second stage thereafter, if the Board decides that a debt exists, it can formally fix the matter for inquiry. In the course of the inquiry, and towards the end of it, the Board should always endeavour to strike a settlement between the debtor and the creditor. For that purpose, they can make use of all dispute resolution methodologies.[2]

However, where there is a failure to settle the dispute, the Board is thereafter expected to issue a certificate which can be implemented through the ordinary courts.[3] Therefore, it is very clear that the implementation of the Board's decision is carried out through the ordinary procedures of the courts, since the Debt Conciliation Board does not have the facilities or is not equipped with the necessary legal authority to implement such an order.

[1] Section 19A of the Debt Conciliation Ordinance, No. 39 of 1941 [as amended].
[2] Section 25 of the Debt Conciliation Ordinance, No. 39 of 1941 [as amended].
[3] Section 29 of the Debt Conciliation Ordinance, No. 39 of 1941 [as amended].

The third stage arises when a dissatisfied party can move for a revision of the order in terms of Section 54(1) of the Debt Conciliation Ordinance, or the Board itself can undertake such a review. The relevant provision in Section 54(1) of the Debt Conciliation Ordinance reads as follows;

> *"54. (1) The Board may, of its* ***own motion or on application made by any person interested****, within three months from the making of an order by the Board dismissing an application, or* ***granting a certificate****, or approving a settlement, or before the payment of the compounded debt has been completed,* ***review any order passed by it and pass such other in reference thereto as it thinks fit.****"* [Emphasis is mine]

Therefore, as correctly argued by the counsel for the Petitioner, it is my view that when the entirety of the procedure laid down in the Debt Conciliation Board is considered as a whole, it can be discerned that there are at least three stages provided to deal with an application concerning a dispute arising between a debtor and a creditor.

**Proceedings before the Debt Conciliation Board**

Therefore, the first matter that the Board must satisfy is whether there is a debt between the Petitioner and the 4th Respondent. The application made to the Board by the debtor, marked as **P1**, is annexed to the entirety of the proceedings marked as **X**, which is also annexed to the Petition.

According to **P1**, the 4th Respondent claims that she had obtained a loan from the Petitioner, admittedly her own daughter, and that the debt had been obtained prior to 2003; that is, prior to the execution of the deed marked as **P3** annexed to the Petition. The Deed marked as **P3** was executed in 2003 and attested by Mr. Sumathipala, a respected notary in the Southern Province of the country. The said execution of the deed took place 21 years prior to the application made to the Debt Conciliation Board by the so-called debtor, who is the mother of the Petitioner.

The debtor has made the application to the Board seeking a declaration that **P3** is not a deed of transfer but, in fact, a mortgage. Although it is in the form of a deed of transfer, she contends that it is, in effect, a sham.

Therefore, the Debt Conciliation Board has inquired into the relevant matter to ascertain whether, in fact, a debt exists, and has made a determination, which is marked as **P4**. The Petitioner in this Application challenges this determination vehemently.

In addition to that, after the determination of the debt, the Board has proceeded to inquire further into the matter with a view of arriving at a settlement between the debtor and the creditor. However, although the creditor made appearances on two occasions before the Board at the preliminary stages, it appears that the creditor failed to appear before the Board thereafter.

After the preliminary stages, once the application was entertained on the basis that a debt exists, the Board decided to issue formal summons, but it should have been formal notices in terms of Section 25(1). Although a decision was taken by the Board to issue formal summons, there is no entry in **X** indicating that such summons were served on the Petitioner, who was the respondent-creditor to the said application.

However, thereafter, there was no appearance. Nevertheless, the Board proceeded to strike a settlement in the absence of the creditor. Therefore, the Board appears to have taken the matter *ex parte* against the creditor, who is the Petitioner to this Application, and thereafter decided to issue the certificate in terms of Section 29(4). Accordingly, an order was issued to be implemented by the court, which is marked as **P5**. The Petitioner again challenges this in this Court, since it has been issued *ex parte*.

**Application for review**

Thereafter, the Petitioner made an application to the Debt Conciliation Board to review its own orders marked as **P5** and **P4**, by way of **P6** annexed to the Petition and affidavit. Further, the Petitioner annexed several documents thereto to establish that after becoming the owner of the property in suit by virtue of **P3**, executed as far back as 2003, she effected repairs and, in fact, constructed a house and developed it by adding to the existing structure, thereby converting it into a new house. Thereafter, she has further asserted that she later allowed her brother, who is the son of the 4th Respondent (the debtor), to occupy one of the rooms of that new house.

It is further asserted by the Petitioner in **P6**, that he (the brother) repudiated the terms and conditions on which he commenced occupation, then he was asked to leave, which he failed to do. Therefore, the Petitioner has annexed certain documents, marked as **R10**, to the said application made under Section 54 of the Debt Conciliation Ordinance, to establish that a case was instituted by the Petitioner against her brother, who is forcibly occupying such room of the said house.

It was her position that since she had received certain threats, she could not continue to stay in the premises and was forced to leave. The debtor, who is the mother, continued to occupy the same premises in her capacity as the mother of the Petitioner.

Therefore, not only the relationship between the parties as debtor and creditor, but also the surrounding circumstances, including the involvement of the brother, have to be taken into consideration in deciding this Application.

Now I will proceed to consider the questions that I have raised above.

As I have mentioned above, the first preliminary issue to be decided is whether the evidence placed before the Debt Conciliation Board warrants any order made in favour of the 4th Respondent, when in fact, a debt exists or the propriety of it.

The Board should also have considered the fact that the impugned deed was executed as far back as 2003, and up until 2024, when this application was made, that is after 21 long years by the 4th Respondent as the debtor, no attempt was made to redeem the property. There is no evidence placed before the Debt Conciliation Board to say that the 4th Respondent made an attempt to redeem it, except the mere oral testimony of the Petitioner.

In fact, she herself, in the evidence-in-chief led at the preliminary stage, admitted to the relevant facts. Therefore, the Board has failed to consider that aspect when it decided that there exists a debt between the debtor and the creditor.

The next matter that has to be considered is whether, as observed by the Board, there was a discrepancy between the consideration stated in **P3** and the value of the property. According to them, the value of the property is 79 times more than the consideration, as reflected in the valuation report. However, they failed to consider that the valuation report had been obtained long after the execution of the said deed.

Further, another point which they have failed to consider is the relationship existing between the parties. When **P3** was executed in favour of the Petitioner by the 4th Respondent, it appears that it was executed for Rs. 100,000/-. In addition, the inarticulate consideration may have passed between the parties as love and affection existed between the parties, which can be and could have

been part of the consideration as enunciated in the case of *Gunasekera v. Amerasekera*[4] by the Supreme Court.

In the case of *Gunasekera v. Amerasekera*, the appellant was the nephew of the Respondent, who transferred her immovable property for a consideration worth less than half of its actual value. Thereafter, she instituted action against the appellant seeking judgement on the basis of *laesio enormis*. However, the District Court dismissed the action, and the Court of Appeal reversed that decision.

On appeal to the Supreme Court, it was argued on behalf of the appellant that, being the nephew and the only intestate heir of the respondent, he stood to inherit her property upon her demise, and that she was well aware of the value of the property at the time of the transfer. In addition, the deed was attested by Mrs. Leena Fernando, who was the Chairperson of Julius & Creasy, a respected firm of lawyers, and who could have advised the respondent on both the valuation and the legal implications. Accordingly, it was held that the respondent transferred the property for a consideration less than its market value, and that the balance was attributable to the love and affection she had for the appellant, who was her nephew and sole intestate heir.

In this case, the members of the Debt Conciliation Board, whose chairman is a respected judge and lawyer, could have considered that aspect of the law. However, the Board has failed to consider that aspect. Therefore, it is my view that the principles of law enunciated in *Gunasekera v. Amerasekera* should apply where the consideration passed includes, in addition to the monetary

[4] [1993] 1 Sri L.R. 170.

consideration mentioned in the deed, other considerations such as love and affection. Hence, love and affection can also form part of the consideration.

The third matter which must be considered is that the Debt Conciliation Board application was made 21 years after the execution of the deed, and in between there had been animosity between the Petitioner and her brother, who is also the 4th Respondent's son and who happened to be occupying a room, as stated by the Petitioner in the document marked as **P6** annexed to the petition and affidavit filed along with the application submitted to the Debt Conciliation Board, which the Board failed to consider. Since there was a repudiation of the arrangement between the Petitioner and her said brother, known as Wickramasinghe, she has filed a District Court case.

Thereafter, it appears that the said person and the 4th Respondent, as mother and son, have a strained relationship against the Petitioner; therefore, they now jointly appear to entertain some sort of animosity towards the Petitioner. This may have prompted them to file the Debt Conciliation Board application by the 4th Respondent, which is clearly alleged by the Petitioner in **P6**. Therefore, the Debt Conciliation Board should have considered that matter in terms of Section 54 of the Ordinance, to review its own orders made as **P4** and **P5,** which they have failed to do.

Therefore, it is my view that even when the Board decided that there existed a debt between the parties, namely the Petitioner and the 4th Respondent, they should have considered all those relevant matters.

In addition to that, the Board failed to consider the improvement claimed to have been effected by the Petitioner as asserted in **P6**.

***Ex parte* notice**

The next question that I have raised is whether there was an *ex parte* application against the Petitioner.

When the Board failed to issue summons on the Petitioner at the second stage, after deciding to accept the application on preliminary matters by **P4** and to issue summons, there is in fact no entry or record to show that summons were served on the petitioner before the formal inquiry commenced. Therefore, there is a lapse on the part of the Board which goes to the root of the matter. As enunciated in the case of *Perera v. National Housing Commission*[5], *Ittepana v. Hemawathie*[6], and *H.L. Siriwardena and Others v. M.A.T. Jauasumana*[7], the failure to issue notice to the respondents is a fatal error on the face of the record as such failure deprives the tribunal of its juridiction over the respondent, who in this case is the Petitioner to this Application, because it goes to the root of the issue.

**Failure to review**

Finally, when the application was made in terms of Section 54(1) of the Ordinance seeking review of the two orders, those matters were not considered at all. The Board merely dealt with the evidence and matters transpired in chronological order and ultimately decided to dismiss the petitioner's application for review. Therefore, the Debt Conciliation Board has failed in its duty to consider the relevant matters that I have mentioned in my order.

[5] 77 NLR 361.
[6] [1981] 1 Sri L.R. 476.
[7] 59 NLR 400.

**Conclusion**

As such, it is my view that a *Writ of Certiorari* lies in respect of each and every order made as **P4**, **P5**, and **P7**. Accordingly, I issue the same as prayed for in prayers *(b)*, *(c)*, and *(d)* of the Petition.

Due to the relationship that exists between the parties, no cost is awarded.

**JUDGE OF THE COURT OF APPEAL**