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

Bettans Group of Companies (Pvt) Ltd.,
No.127/10, Old Kandy Road,
Dalugama,
Kelaniya.
Petitioner

CASE NO: CA/WRIT/230/2015

Vs.

1. Lankaputhra Development Bank,
   No.80, Nawala Road,
   Nugegoda.
2. K. H. Lasantha Gunawardena,
3. T. Riaz Hameed,
4. P. R. Senarathna,
5. Ranil Fernando,
6. M. P. Jayamaha,
   All of Lankaputhra Development Bank,
   No.80, Nawala Road,
   Nugegoda.

   Respondents

1A. Regional Development Bank,
(Pradeshiya Sanwardhana Bank)
No.933, Kandy Road, Wedamulla,
Kelaniya.

2A. J. T. S. P. Kariyawasam,

3A. A. K. Seneviratne,

4A. M. J. P. Salgado,

5A. K. B. Rajapakshe,

6A. K. B. Wijeratne,

7A. J. R. Fernando,

8A. Y. M. D. Warnasuriya,
All of Pradeshiya Sanwardhana Bank,
No.933, Kandy Road, Wedamulla,
Kelaniya.
Substituted Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: P. Radhakrishnan for the Petitioner.
Asendra Siriwardhena for the Respondents.

Argued on: 19.06.2020

Decided on: 10.07.2020

Mahinda Samayawardhena, J.

Admittedly, the Petitioner Company obtained banking facilities from the 1st Respondent Bank and defaulted. The Petitioner

says the default is due to reasons beyond its control. After a spate of correspondence spanning many years, the Bank has, in terms of section 4 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, as amended, passed a Board resolution dated 27.04.2015 marked R13 to recover the dues of the Petitioner Company by parate execution.

The Petitioner says the Bank refused to reschedule the loan, as recommended by the Central Bank by letter dated 19.05.2015. In fact, the said letter marked R15(A) tendered with the Respondents' statement of objections, merely requests the Respondent Bank to look into the matter and respond to the Petitioner within 14 days.

The Petitioner filed this application seeking a writ of mandamus compelling the Bank to reschedule the loan, and a writ of certiorari quashing the aforesaid Board resolution as it is "*arbitrary and grossly unreasonable*".

This Court cannot quash the said Board resolution on the grounds of arbitrariness and unreasonableness because the resolution is not arbitrary and unreasonable. The Bank is statutorily entitled to pass such resolutions to recover its dues. Nor can this Court force the Bank to reschedule the Petitioner's loan. There is no obligation, statutory or otherwise, on the part of the Bank to reschedule the loan.

The Petitioner in paragraph 20 of the amended petition says the Bank did not serve notice of the resolution on the Petitioner, as required under section 8 of the Act, and therefore "*the Bank's action is procedurally ultra vires.*" The Bank produced

documents marked R14G and R14H to prove service of notice on the Petitioner by registered post. There is no denial of this by way of counter affidavit.

During the course of the argument, learned Counsel for the Petitioner raised three new points.

The first one is, the substituted 1st Respondent Bank did not serve notice of the resolution on the Petitioner. At the time the Petitioner filed this application, the name of the 1st Respondent Bank was Lankaputra Development Bank. Whilst the case was pending, the Attorney-at-Law for the Petitioner, with notice to the Attorney-at-Law for the Lankaputra Development Bank, had made an application by way of motion dated 26.06.2019 to substitute Regional Development Bank in place of Lankaputra Development Bank, as "*Lankaputra Development Bank has been taken over by and merged with the Regional Development Bank in Sri Lanka*". The said application was allowed. Having acted to substitute the Respondent Bank, it cannot lie in the mouth of the Petitioner now to contest the standing of the substituted Bank. Moreover, if the Petitioner was serious on this point, the Petitioner would have raised it as an issue at the time of the substitution, calling for the substituted Bank to tender proof of how the said merger or takeover took place. The Petitioner cannot spring surprise on the Respondents at the argument by raising mixed questions of fact and law for the first time.

The next point raised is, Lankaputra Development Bank and its successor Regional Development Bank are Licensed Specialised Banks and not Licensed Commercial Banks, and therefore these

Banks cannot avail themselves of the provisions of the Recovery of Loans by Banks (Special Provisions) Act to recover their debts by parate execution. It is the argument of Counsel for the Petitioner that, in terms of section 22, only Licensed Commercial Banks can resort to parate execution. This argument is unsustainable. An amendment to the principal Act by Act No. 1 of 2011 encapsulates "Licensed Specialised Bank" within the definition of "Bank".

The final submission of Counsel for the Petitioner relates to inconsistency in the preamble of the Act and the said loan granted to the Petitioner. The preamble of the Act states it is "*An Act to provide for the recovery of loans granted by Banks for the economic development of Sri Lanka*". Counsel argues the loan given to the Petitioner does not fall within the purpose stated in the preamble and therefore the Bank cannot recover its dues by parate execution. This is not the first time this argument has been presented before this Court. In *DFCC Bank Ltd v. Somaweera [2003] 3 Sri LR 128*, this Court rejected the same argument on two grounds. Firstly, the preamble of an Act cannot be utilised to restrict a clear provision in the Act. Secondly, even if what is recoverable under this Act is only loans for the economic development of Sri Lanka, if there is material to suggest the loan has contributed to economic development, the requirement is fulfilled.

In the case of *V.T. Ramalingam (Labour Officer) v. S. Sinnadurai (1965) 67 NLR 45* at 47 it was held:

> *It is a well known canon of construction that if the words of a statute are clear, a preamble to an Act cannot control its clear and unambiguous provisions. In The Attorney-General, v. Prince Ernest Augustus of Hanover (1957) 2 WLR 1 at 9, Viscount Simonds succinctly stated this proposition as follows: "I would suggest that it is better stated by saying that the context of the preamble is not to influence the meaning otherwise ascribable to the enacting part unless there is a compelling reason for it."*

I have no reason to deviate from the above dicta.

Before I part with this Judgment let me also add the following. The Petitioner cannot invoke the writ jurisdiction of this Court as of right. It is a discretionary relief; an act of grace on the part of the Court. The fact that the loan was obtained and the Petitioner is in default is undisputed. By this application, filed more than five years ago, the Petitioner has prevented the Bank from recovering its dues through parate execution–a quicker and faster procedure recognised by the law. Banks are not charitable institutions; they are the cornerstones of economies. It should be understood that similar to the Petitioner being engaged in a business, granting loans with the expectation of timely repayment is a major part of the ordinary course of business of a Bank. If a Bank is prevented from taking such measures as it is entitled in law to take to protect its interests, the economy of the country would suffer. The Recovery of Loans by Banks (Special Provisions) Act was passed to assist Banks to fast-track the procedure of debt recovery. There is no place for high-flown technical objections under this Act. As this Court

held in *Zubair v. Bank of Ceylon [2000] 2 Sri LR 187*, "*In debt recovery matters it would not be correct for the Court to hold against the intention of the legislature on technicalities*."

I dismiss the application of the Petitioner with costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.
I agree.

Judge of the Court of Appeal