

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

In the matter of an application under Article 140 of
the Constitution for an Order in the nature of Writs of
Certiorari and Mandamus.

Nildiya Mankada Safari Lodge (Pvt) Ltd,
C D E Place,
Walawegama,
Udawalawa.

PETITIONER

CA CASE NO: CA/WRT/588/26

Vs.

1. Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.
2. Harsha Amarasekera,
Chairman,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.
3. Sanjaya Gunawardana,
Managing Director/CEO,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.
4. Rushanka Silva,
Deputy Chairman,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

5. Dilip de S Wijeyeratne,
Executive Director,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.
6. Aroshi Nanayakkara,
Independent, Non-Executive Director,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.
7. Vajira Kulatilaka,
Independent, Non-Executive Director,
Sampath Bank PLC,
No 110, Sir James Peiris Mawatha,
Colombo 02.
8. Keshini Jayawardena,
Independent, Non-Executive Director,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.
9. Vindo Hirdaramani
Independent, Non-Executive Director,
Sampath Bank PLC
No 110, Sir James Peiris Mawatha,
Colombo 02.
10. Hiran Cabraal,
Independent, Non-Executive Director,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

11. Roger Keith Modder,
Independent, Non-Executive Director,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

12. Dilshan Hettiaratchi,
Independent, Non-Executive Director,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

13. Ajantha de Vas Gunasekara,
Executive Director/CFO,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

14. Aruna Jinadasa,
Zonal Head of Recoveries,
Sampath Bank PLC,
No. 110, Sir James Peiris Mawatha,
Colombo 02.

15. P. K. E. Senapathi,
Licensed Auctioneer,
Colombo.

RESPONDENTS

Before: **B. Sasi Mahendran, J**
 Adithya Patabendige, J

Counsel: Kamal Dissanayaka with Sajani Ranasinghe for the petitioner.

 Kaushalya Nawarathna, PC with Neranjan Vitharana with Sahanya Darnakeerthi
 for the Respondents.

Supported On: 08.09.2026

Order On: 06.10.2026

ORDER

B. Sasi Mahendran, J.

The Petitioner filed this application seeking a *Writ of Certiorari* to quash the resolution of the 1st Respondent Bank and issue a *Writ of Mandamus* to recall the auction and direct the 15th Respondent to stop the auction.

Factual circumstances of this application are as follows.

According to the affidavit of the Petitioner dated 3rd August 2023, the Petitioner entered into a loan agreement with the 1st Respondent Bank under which the loan was repayable in United States Dollars. As security for the loan, three directors of the Petitioner company, including the Petitioner, mortgaged the property in question.

The Petitioner states that the Easter Sunday attacks and the COVID-19 pandemic adversely affected the business of the Petitioner company. In view of these circumstances, he requested the 1st Respondent Bank to permit repayment of the loan in Sri Lankan Rupees instead of United States Dollars. The Petitioner states that he repeatedly requested the Bank to accept this proposal. By letter dated 19th June 2023, the 1st Respondent Bank informed the Petitioner that the consent of the Central Bank was required to convert the loan repayment from United States Dollars to Sri Lankan Rupees.

According to the Petitioner, he received a letter of demand dated 30th May 2023 calling upon him to settle the arrears due on the loan. By the said letter, the Bank informed the Petitioner that the outstanding amount was USD 290,664.81. Thereafter, several discussions took place between the Petitioner and the 1st Respondent. During the course of such discussions, the Petitioner proposed to pay USD 70 million in full and final settlement of the outstanding amount. However, the said proposal was not accepted by the Bank. By letter dated 21st May 2024, the Bank informed the Petitioner that an extension of time had been granted for the repayment of the outstanding amount. However, despite the extension granted, the Petitioner failed to make any payment towards the outstanding loan.

According to the Petitioner, the bank, by letter dated 4th May 2026. The Petitioner received a copy of the resolution passed on 29th April 2026 by its Board of Directors to take action under Section 4 of the Recovery of Loans by Banks Act No. 4 of 1990.

In the said letter, the Petitioner was requested to contact the recovery department to arrange a short-term recovery plan. By letter dated 07th May 2026, the Petitioner requested a period of one month to settle the remaining 35 million. By letter dated 16th June 2026, the bank has notified the Petitioner that since the Petitioner failed to repay the dues, they have taken steps to publish the resolution in the Government Gazette on 22nd May 2026 and in newspapers in all three languages on 14th May 2026. By letter dated 23rd June 2026, the Petitioner requested the bank to repay the remaining 35 million by instalments. By letter dated 28th July 2026, the 1st Respondent has informed the Petitioner of the date and time of the auctioning of the property.

The main argument put forward by the Petitioner is that the bank has considered the request made by him to convert the repayment into Sri Lankan rupees, as the depreciation of the local currency against USD have been impact of the repayment. Further, he alleged that he never received the proceeds in US Dollars.

It should be noted that the Petitioner himself admitted that the loan agreement with the 1st Respondent, where the Petitioner agreed to repay the loan in USD in lieu of benefits of the comparatively lower interest rate available under the special schemes.

We are mindful of the sentiments expressed by the Justices in the following judgments with regard to the Recovery of Loans by Banks under the Recovery of Loans by Banks Act.

His Lordship Samayawardhena, J in **Bettans Group of Companies (Pvt) Ltd v. Lankaputhra Development Bank and Others, CA/WRIT 230/2015, decided on 10.07.2020**, held that;

“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.”

In **Zubair v. Bank of Ceylon**, [2000] 2 SLR 187 at page 188, Udalgama, J held that;

“Before parting with this order, it would also be appropriate to mention that in Debt Recovery matters it would not be correct for courts to hold against the intention of the Legislature on technicalities.”

Aluwihare, J in **Upul Chaminda Perera Kumarasinghe and Another v. Pan Asia Banking Corporation PLC**, SC Appeal No. 74/2021, Decided on 11.10.2023, held;

“The plaintiffs cannot seek the intervention of the court to prevent the Defendant Bank from lawfully exercising their rights in terms of a valid contract, without making a case for irreparable and irremediable damage. Courts cannot and should not be treated as the refuge of all defaulting creditors.”

We are mindful that the Petitioner has failed to pay the loan facilities which he obtained in 2018. 1st Respondent Bank has given ample facilities by rescheduling the said loan. The conduct of the Petitioner amounts to that of a habitual defaulter, that is to say that his conduct does not honor his obligation. Under such circumstances, the Court will not grant any relief.

In **Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and Another**, [1996] 2 SLR 70 at page 73, Jayasuriya, J held that;

“I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the court has discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief.”

The Petitioner did not satisfy this Court that by passing the resolution, the Respondent Bank has acted contrary to the loan given to the Respondent.

As stated by Grero, J in **Desmond Perera and Others v. Karunarathne, Commissioner of National Housing and Others**, [1994] 3 SLR page 316, at pages 329 and 330:

“As pointed out by the learned President's Counsel for the 3rd respondent, Lord Diplock in the case of CCSV v. Minister for the Civil Service (1984) UKHL 9, clearly classified under three

heads the grounds on which administrative action could be subject to control by judicial review.

They are:

(i) Illegality;

(ii) Irrationality; and

(iii) Procedural impropriety.

Describing the aforesaid grounds, Lord Diplock said as follows:

“By 'Illegality' as a ground for judicial review, I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, by judges by whom the judicial power of the state is exercisable.”

In the instant case, the Petitioner has failed to satisfy the aforesaid grounds. Accordingly, for the reasons set out above, I dismiss the application of the Petitioner without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Adithya Patabendige, J.

I AGREE

JUDGE OF THE COURT OF APPEAL