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

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

C.A. CASE NO. WRT/0220/23

1. Shamreens (Private) Limited,
   11A, KK Street,
   Puttalam.

2. S.R. Shameela,
   21, Cassim Lane,
   Puttalam.

PETITIONERS

Vs.

1. Amana Bank,
   No. 486, Galle Road,
   Colombo 03.

2. Ali Asghar Akbarally,
   Chairman,
   Amana Bank PLC,
   No. 486, Galle Road,
   Colombo 03.

3. Mohamed Azmeer,
4. Pradeep Dilshan Rajeeva Hettiarachchi,
5. Aaron Russell-Davison,
6. Mohammed Ataur Rahman Chowdury,

7. Syed Muhammed Asim Raza,
8. Omar Kassim,
9. Mohamed Adamaly,
10. Tishan Subasinghe,
11. Mohammad Hassan,

3rd to 11th Respondents,
Directors,
Amana Bank,
No. 486, Galle Road,
Colombo 03.

12. L.B. Senanayake,
No. 200, 2nd Floor, Hulftsdorp Street,
Colombo 12.

RESPONDENTS

BEFORE : K. M. G. H. KULATUNGA, J.

COUNSEL : Faiszer Musthapha, P.C., with Shaheeda Barrie and Tharaka Nanayakkara for the Petitioner, instructed by Sanjeewa Kaluarachchi.

Palitha Kumarasinghe, P.C., with Asanka Ranawaka for the 1st – 5th, 9th, 10th, and 12th Respondents, instructed by Paul Ratnayake Associates.

SUPPORTED ON : 24.10.2025

WRITTEN SUBMISSIONS ON : 31.10.2025 and 03.11.2025

DECIDED ON : 03.12.2025

ORDER

K. M. G. H. KULATUNGA, J.

1. The 1st petitioner is a company that obtained certain facilities from the 1st respondent bank. The said facilities are said to be in the nature of Islamic banking facilities. As the 1st petitioner company failed and defaulted to make payment as agreed, the 1st respondent bank has resolved under the provisions of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990, to *parate* execute and recover the sums so due. The petitioners have thus filed this application seeking primarily a writ of *certiorari* to quash the resolution published in Gazettes marked P-19(a), P-19(b), and P-19(c). Along therewith, the petitioner is also seeking to quash the notice of resolution P-18(b) and also the Board resolutions P-21(a), P-21(b), and P-21(c). Then the petitioner further seeks a writ of *certiorari* to quash the notice of sale and also the Certificate of Sale marked P-23(a), P-23(b), and P-23(c). The 1st respondent bank has resolved under Section 3 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (hereinafter referred to as Act No. 4 of 1990). This application, though filed in 2023, has not been supported up until now, and was accordingly supported on 24.10.2025.

2. The said resolution, as empowered by Section 3 of Act No. 4 of 1990, had been passed on 22.05.2021 and published in the Gazette Extraordinary dated 08.07.2022. The petitioners' main ground and basis of seeking the said writs is that the facilities obtained by the 1st petitioner are not 'loans' within the meaning of Section 3 of Act No. 4 of 1990. The contention of the petitioner is that these facilities are Islamic finance facilities in the nature of express cash on the principles of *Bai* and *Ijarah* and on the principles of diminishing *Musharaka*, which do not specify interest, and as such, they are not loans, and Section 3 is not applicable. In support of which, it is emphasised that the use of the words such as 'rental' and 'units of ownership' clearly shows that such facility is not a loan.

3. The 1st respondent bank had filed limited objections on 30.05.2023. According to which, the facilities granted by the offer letter P-2 are in fact banking facilities, being a short-term facility and express cash facility. It is the submission of Mr. Palitha Kumarasinghe, P.C., that the 1st petitioner had agreed to and accepted the said offer letter, which also included a payment schedule. However the petitioner has failed and not produced the said payment schedule, which, according to the respondent bank, is a deliberate suppression of a material fact, as this schedule clearly establishes that the facility granted is, in fact, a loan.

4. The respondents also take up the position that the 1st petitioner has initially instituted action in the District Court of Puttalam, Case No. 75SPL, on the specific basis that these facilities are in fact loans. The petitioner has annexed and produced a copy of the said District Court proceedings marked P-27. It is the position of the respondent bank that the petitioners cannot now take a different position from that which they have taken up at the District Court.

5. The next argument and objection raised is that the resolution challenged had not been assailed at the outset, and now the auction has been held in respect of the collateral (the property mortgaged), and the Certificate of Sale under Section 15 of Act No. 4 of 1990 has also been issued by the Board. It was also submitted that as at now, the said Certificate has in fact been registered, and in view of the provisions of Section 15(1) and 15(2), it is not possible to assail or challenge the Certificate as the law expressly provides that such Certificate shall be conclusive proof of the sale.

6. That being so, now it is opportune and relevant to consider the history and the legal basis of Islamic banking in Sri Lanka. Initially, Schedule II of the Banking Act, No. 30 of 1988 was amended to enable the operation of Islamic financing institutions. Then in 2005 the Central Bank of Sri Lanka permitted licensed commercial banks and licensed specialised institutions to offer facilities on selected Islamic finance

instruments. The amendment as aforesaid to the Banking Act, No. 30 of 1988 and the Central Bank circular/directive issued in March 2005, provided adequate legislative and regulatory provision for conventional banks and financial institutions to grant and operate Islamic financial facilities.

7. The directions in the Circular issued to Licensed Specialised Banks titled "*Introduction of Products based on Islamic Principles*", distributed at the meeting of the CEOs of LCBs and LSBs of the Central Bank on 19.05.2005, state that

> *"The recent amendments to the Banking Act permit banks to introduce banking products based on Islamic principles. Several banks have requested permission from CBSL in this regard. In order to ensure that all banking operations, be it conventional banking or Islamic Banking, are conducted in a prudential manner, the following regulatory framework will apply:*
>
> > *1. The Islamic Banking operations should be conducted strictly within the existing regulatory framework applicable to the licensed banks.*
> > *2. The respective banks should maintain separate books of accounts for their Islamic Banking Operations.*
> > *3. Data on Islamic Banking should be included under a separate column in the statutory returns submitted to CBSL in order to enable a clear demarcation between the accounts relating to conventional banking and Islamic Banking.*
> > *4. The prudential regulations that apply to conventional banking operations will apply equally to Islamic Banking business and banks are advised to strictly follow the existing regulations. If any deviations are observed, such banks will be required to immediately cease the continuation of the relevant operations.*
>
> *The CBSL will write individually to the banks that have inquired in this regard."*
>
> (*vide* The Annual Report of the Central Bank, 2005)

8. Thus, Sri Lanka appears to be one of the few non-Islamic countries to have legislation to facilitate the Islamic banking sector. Islamic Finance is regarded as Sharia-compliant finance because it is developed based on the teachings in the Holy Qur'an and sacred scriptures of Islam.

These Islamic principles are known by the term 'Sharia', and a key feature of this is that lending of money based on interest is not allowed. But Islamic Finance has alternative investments and financing that go based on and on the basis of profit and loss sharing the markups, as in *Ijarah* and *Murabaha*.

9. Now I will proceed to consider these grounds as urged by the petitioner. The provisions that enable parate execution are the following. Section 3 of Act No. 4 of 1990 provides as follows:

> "*Whenever default is made in the payment of any sum due on any loan, whether on account of principal or of interest or of both, default shall be deemed to have been made in respect of the whole of the unpaid portion of the loan and the interest due thereon up to date; and the Board may in its discretion, take action as specified either in section 5 or in section 4;*
>
> *Provided, however, that where the Board has in any case taken action, or commenced to take action, in accordance with section 5, nothing shall be deemed to prevent the Board at any time from subsequently taking action in that case by resolution and section 4 if the Board deems it advisable or necessary to do so."*

Section 5 of Act No. 4 of 1990 provides as follows:

> *"(1) Subject to the provisions of Section 7 the Board may by resolution to be recorded in writing authorize any person specified in the resolution to enter upon any immovable property mortgaged to the bank as security for any loan in respect of which default has been made or where the terms of any loan agreement are contravened in respect of such property to take possession of, and to manage and maintain such property, and to exercise the same powers in the control and management of such property as might have been exercised by the mortgagor if he had not made default, or contravened the terms of such agreement.*
>
> *(2) Whenever any sum of money due on any loan granted for any agricultural or industrial undertaking on the security of any plant, machinery or other movable property to the bank is in default or where the terms of any loan agreement are contravened in respect of such property, the Board may authorize any person specified in writing to enter and take possession of such agricultural or*

industrial undertaking in which such plant, machinery or other movable property is situate, and exercise the same power in the control and management of such under-taking as might have been exercised if such property had been pledged or mortgaged."

What I observe is that the Board of a bank is entitled to so resolve when there is a default made in the payment of any sum due on any loan. It is also provided therein that whether the default be on account of the principal or the interest, or of both, a Board is empowered to so resolve. Then, it provides that the said default is deemed to be in respect of the whole of the unpaid portion of the loan and the interest due thereupon up to date.

10. The principal submission and argument of the petitioner is that the facilities obtained are investments and not loans as contemplated by Section 3. The word 'loan' was previously defined by Section 22 of Act No. 4 of 1990. This provision was amended by the amending Act No. 1 of 2011. The original provision of Section 22 included the definitions of the words 'bank', 'Board', 'loan', and 'property' in the following form:

"*In this Act, unless the context otherwise requires **"bank"** means a licensed commercial bank within the meaning of the Banking Act, No. 30 of 1988, other than—*

(a) the Bank of Ceylon established by the Bank of Ceylon Ordinance (Chapter 397);
(b) the Peoples's Bank established by the People's Bank Act, No. 29 of 1961;
(c) any bank established under the provision of the Regional Rural Development Bank Act, No. 15 of 1985, and shall be deemed to include the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act, (Chapter 165);

*"**Board**" in relation to a bank means the Board of Directors of the bank or any body of persons by whatever name or designation called for the time being charged with the management or administration of such bank;*

> *"**loan**" means a loan of money and includes any overdraft or advance or any other monetary accommodation by whatever name or designation called;*
>
> *"**property**" means any movable or immovable property and includes the right, title and interest of the lease, in any case where a loan is secured by a mortgage of the interest of a lessee under a lease from the State."*

However, the amending Act No. 1 of 2011 repealed Section 22, and the following Section with a new definition of the word 'bank' was introduced as follows:

> *"Section 22 of the principal enactment is hereby repealed and the following section substituted therefore:—*
>
> > *"**bank**" means a licensed commercial bank or a licensed specialised bank within the meaning of the Banking Act, No. 30 of 1988 which is **empowered** to take possession of movable or immovable property which has been mortgaged to the bank as security for any loan, overdraft, advance or other accommodation and in respect of which default has been made."* [emphasis added].

11. On a comparison of the pre- and post-amendment Sections, it appears that the amendment has repealed Section 22 that prevailed. In its original form, four words, 'bank', 'Board', 'loan', and 'property', were defined under Section 22. However, the amended provision has completely repealed all definitions and brought in a new definition of the word 'bank'. The end result is that the Interpretation Section now contains only the definition of a single word, 'bank'.

12. According to the definition of 'bank' as amended, the functional attributes of the definition of the word 'loan' has been brought into the definition of the word 'bank'; that a bank is *empowered to take possession of movable or immovable property which has been mortgaged to the bank as security for **any loan, overdraft, advance or other accommodation and in respect of which default has been made***. Correspondingly, the repeal of the definition of the word 'loan' leaves it

open for a Court to interpret if any facility or accommodation, in such circumstances, would amount to a loan within the meaning of Section 3, and if 'loan' includes any loan or overdraft, advance, or other accommodation in respect of which the default has been made.

13. The effect and import of the inclusion of the functional attribute of the previous definition of 'loan' to that of the word 'bank' is significant and relevant. As I see, by so amending the word 'bank', the legislature confirms the empowerment of banks to take possession of mortgaged property and recover any outstanding sum in respect of any loan, overdraft, advance, or other accommodation which is in default. The word 'loan' as previously defined, included certain components as referred to above. Accordingly, the effect of the totality of the amendment and the repeal should be given a construction so that the object of this statute is not defeated. In this context, I find the following opinion of Lord Coke, in ***Heydon's Case*** (1584) 76 ER 637, pertinent:

> *"It was resolved by them that for the sure and true interpretation of all statutes in general be they penal or beneficial, restrictive or enlarging of the common law…the obligation of all the judges is always to make such construction as shall* ***suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief****, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico. This rule is popularly known as the 'mischief rule'. In a broader sense, this may be understood as the* ***purposive construction of statutes****."* [emphasis added].

14. N. S. Bindra's 'Interpretation of Statutes' (13th Ed., at page 347) enunciates this as follows:

> *"A literal interpretation is not always the only interpretation of a provision in a statute and the Court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used that would control the literal meaning of the words used in a provision of the statute…Therefore a literal and mechanical construction is not the only interpretation*

which courts are bound to give to the words of a statute—it may be possible to control the wide language in which a provision is made by taking into account what is implicit in it in view of the setting in which the provision appears and the circumstances in which it might have been enacted."

15. In ***Rajavarothiam Sampanthan and others vs. The Attorney General and others*** (SC/FR/351-356, 358-361/2018, decided on 13.12.2018), it was held as follows:

> *"The next principle of interpretation which should be mentioned is that, where there is more than one provision in a statute which deal with the same subject and differing constructions of the provisions are advanced, the* ***Court must seek to interpret and apply the several provisions harmoniously and read the statute as a whole.*** *That rule of harmonious interpretation crystallises the good sense that all the provisions of a statute must be taken into account and be made to work together and cohesively enable the statute to achieve its purpose"* [emphasis added].

Lord Goddard C.J., in ***Barnes vs. Jarvis*** [1953] 1 WLR 649, at 652, stated, "*A certain amount of common sense must be applied in construing statutes.*" In ***R vs. Secretary of State for Health ex parte Quintavalle (on behalf of Pro-Life Alliance)*** [2003] UKHL 138, Lord Bingham stated:

> *"The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."*

The above has been cited with approval by His Lordship Samayawardhena, J., in ***Chemisales Holding (Pvt) Ltd vs. People's Bank*** (SC/APPEAL/148/2019, decided on 03.04.2025). As articulated in ***Heydon's Case*** (supra) and the above dicta, the Court is required to examine the state of the law prior to the enactment, identify the mischief or defect which the statute was designed to remedy, and construe the provision in a manner that suppresses the mischief and advances the remedy. This approach prevents a construction that would defeat the object of the statute and ensures that the legislative purpose is preserved and given practical effect.

16. The object of Act No. 4 of 1990 is to empower banks and financial institutions to recover sums due on loans expeditiously by *parate* execution. The word 'loan' appears right throughout the entirety of Act No. 4 of 1990. It is apparent and necessary so that the said word 'loan' had been used in the context of the original definition of the word 'loan' as it appeared in Section 22. The basic object and purpose of this Act was to enable banks to expeditiously recover the defaulted repayment of the facilities granted subject to the security of collateral in the nature of property mortgages. Banks are empowered and permitted to offer Islamic financing facilities. Thus, by whatever name they be called, banks are empowered to recover such sums in default by *parate* execution if such facility is secured by a mortgage of land and property. Accordingly, the reference to 'loan' in Section 3, to my mind, certainly must include all the aforesaid facilities, namely overdraft, advance, and other accommodations, referred to in the definition of 'bank' and any sum due thereon, be it profit or a sum due by whatever name it be referred to.

17. In that context, I will now consider if facilities granted to the 1st petitioner would amount to a loan or come within the meaning of Section 3. At the very outset, it is clearly a facility of a financial nature offered to the petitioner. As reflected in P-2, what both of these facilities entail are as follows:

"<u>Facility Details</u>

A. Short Term Facilities (On the principles of Local Murabaha)

Limit	*LKR 15,000,000/- (Fifteen Million Only)*
Purpose	*Stock purchase*
Pricing	*12% p.a.*
Tenure	*90 days (Revolving)*
Payment	*On maturity*

B. Express Cash (On the principles of Jai and Ijara)

Limit	*LKR 5,000,000/- (Five Million Only)*
Purpose	*To Finance Short Term Working Capital requirement of the business*
Pricing	*12% p.a.*
Tenure	*12 Months*
Payment	*In consideration of the facility granted, you will be obliged to make Monthly payments from the date of signing the Deed of Lease, in terms of the payment Schedule – 1 attached hereto in respect of the separate units of the property."*

18. These facilities, even if they are not considered to be loans simpliciter in the sense of advancing of money and interest accrued thereon, will come within the meaning of 'other accommodation'. Then, the amended definition of 'bank', read with Section 3, would enable a bank to resolve to recover by *parate* execution the said sums due on such facility. That being so, it will come within the meaning of the word 'loan' in Section 3.

19. Then, on a plain reading of the operative components of the aforesaid facilities, both A and B have a limit, which is the amount of the facility, and an annual rate, which is referred to as *pricing*; the description of payment is *on maturity,* and for the second facility, it is *monthly* from the date of signing the deed of lease. However, apart from the offer letter, there is no other agreement or instrument tendered to Court. For all purposes, it is apparent that this is a facility with a 12% annual rate specified, along with a payment schedule. No doubt, the first facility does refer to the principles of local *Murabaha*, and the second, to the principles of *Bai* and *Ijarah.* These are references to Islamic principles of Sharia law. However, Sharia law is not a part of the law of Sri Lanka, but party autonomy permits parties to include certain conditions between the parties. That being so, this Court will now consider the actual nature of this facility and if it comes within the meaning of 'loan' within the meaning of Section 3.

20. The facilities referred to as *Murabaha*, *Bai, and Ijarah* are, if at all, the purchasing of certain properties, and handing over to the customer

either on lease or for payment to be made periodically, or in certain instances, some form of investment with a return by way of profit. In the normal course, such transactions would not entail or require collateral by way of a property mortgaged. In the present instances, both the facilities have been provided with the collateral by way of a property mortgage. In the normal course of transactions, such collateral in the nature of a property mortgage is provided in respect of loans in the sense of advancing money and such financial facilities. This, once again, leads to a very strong inference and conclusion that the facilities, under whatever description given, are loans, in that sense.

21. Under the law as it stands today, as provided for by the Mortgage Act, No. 6 of 1949, the remedy in such instances is a hypothecary action, as provided for by Section 2 of the said Act. Section 2 provides that a hypothecary action means an action to obtain an order declaring the mortgaged property to be bounded executable or the payment of the monies due upon the mortgage and to enforce payment by a judicial sale of the mortgaged property. By Act No. 4 of 1990, the statute provides and empowers the lending bank to take possession and execute the sale and enforce payment without recourse to a Court. This is the power that is conferred by Sections 3, 4, and 5, read with Section 22 of Act No. 4 of 1990. Therefore, when a sum falling due is secured by a property mortgage with the said default and such sum becoming so due, the bank derives the right and authority under the said provisions to resolve to sell by public auction such property.

22. In the District Court action instituted by the petitioner, the 1st petitioner company admits that these facilities are in fact loan facilities. This had been taken up in the limited objections, and the petitioners, in their counter, have not denied or provided any reason as to the initial acceptance that these facilities were loans. The sum total and effect of this is that the petitioner company itself has, for all purposes, considered that the said facilities are loans. This fact is buttressed by the fact of a

payment schedule being part and parcel of the offer letter, which has been accepted by the 1st petitioner. Thus, in the context of the present application, it is possible to bring the aforesaid facilities within the meaning of 'loan simpliciter'. As aforestated, the Central Bank of Sri Lanka has certainly recognised and permitted banks to enter into and offer Islamic Banking Facilities. As stated hereinabove, this does not mean an application of Sharia Law, but certain private arrangements between the contracting parties may be included to fall in line with the teachings and principles of The Qur'an and Sunnah.

23. In ***Beximco Pharmaceuticals Ltd & Others vs. Shamil Bank of Bahrain*** [2004] EWCA Civ 19, Potter L.J., adverted to the Principles of Sharia Law as enunciated in The Qur'an and Sunnah as follows:

> *"One principle expressly stated in the Qur'an and Sunnah is that the charging of interest upon a loan, in whatever form, is 'Riba' and is contrary to the Sharia. At Sura II, 275-79 of the Qur'an it is stated that:*
>
> > *' … Allah has made buying and selling lawful and has made the taking of interest unlawful. Remember, therefore, that he who desists because of the admonition that has come to him from his Lord, may retain what he has received in the past; and his affair is committed to Allah. But those who revert to the practice, they are the inmates of the fire; therein shall they abide. … O Ye who believe, be mindful of your duty to Allah and relinquish your claim to what remains of interest, if you are truly believers. But if you do not, then beware of war from the side of Allah and his Messenger. If, however, you desist, you will still have your capital sums; thus you will commit no wrong, nor suffer any wrong yourself.'*
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> *Sura III 130 states that:*
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> > *'O Ye who believe, devour not interest, for it goes on multiplying itself; and be mindful of your obligation to Allah that you may prosper.': The Quran, translated by Muhammad Zafrulla Khan, Curzon Press, 1971."*

According to which interest that goes on multiplying itself is not permitted and accepted according to the said principles; however, the recovery of the principal sum or the capital is permitted. In view of this bar or prohibition, banks and lending institutions have in fact found a commonly permissible mode or method to grant financial facilities to those professing Islam, which will not violate the aforesaid principle. In ***Beximco Pharmaceuticals Ltd & Others vs. Shamil Bank of Bahrain*** (supra), the legality of Sharia Banking Facilities was considered, and the Court of Appeal of England and Wales referred to an expert opinion which appears as follows:

> *"In this connection it was stated in the witness statement of Mr Choudhury for the defendants that he made it clear that the monies sought from the Bank by the first and second defendants were required as working capital for the Beximco group and that it was the Bank which required that the transaction be structured in the forms adopted in order to comply with Sharia law. The fourth defendant, as a director of the first, second and fifth defendants' and a personal guarantor of the ESUAs, stated that:*
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> > *'… it is not uncommon for banks, in their enthusiasm to make profitable loans, to use a Morabaha Agreement to disguise what is, as a matter of commercial reality, an interest-bearing loan. That is precisely what happened in the present case and both the Claimant and the Defendants were quite content that this should happen. Neither was under any illusion as to the commercial realities of the transactions, and the claimant was happy to dress the loan transactions up as Morabaha sales (or Ijarah leases), whilst taking no interest in whether the proper formalities of such a sale or lease were actually complied with.'"*

24. The fact that, by whatever label that may have been assigned to the various components of facilities A and B, there is no doubt a principal amount, and another sum accrued on an annual rate is prescribed. It is in view of these attributes that the petitioner company proceeded on the premise that it was a loan when they filed action in the District Court in the first instance. Granting of a financial facility is not prohibited by the principles of The Qur'an. Recovery of such a capital sum is also permissible. It is, if at all, the charging recovery of interest is that is prohibited. As repeatedly stated, Sharia law or Islamic law, in this respect, is not a part of our law. Accordingly, in reality, the facility in

fact granted is a loan of money, and the return prescribed is the interest. Securing the same by a property mortgage put it beyond doubt that it is so.

25. In view of the amended definition of the word 'bank' of the Recovery of Loans by Banks (Special Provisions) Act, when such a facility has been afforded, it certainly will come within the meaning of other accommodation, and when a default has been made in respect of such accommodation, be it principal or the profit, or whatever description it may be given, such bank is empowered to take possession of the movable and immovable property mortgaged as security for such accommodation. The word 'loan' in Section 3 of the said Act would include any accommodation or facility afforded by a bank. Even if the sum due was only the principal, a bank is entitled to resolve under Section 5 of the said Act. In the present circumstances, I hold that the petitioner bank was lawfully entitled and permitted to resolve, under Section 5 read with Section 3, to recover as done.

26. I have found and concluded that the facility granted to the petitioner and defaulted in repayment is, in form and in fact, a loan. Similarly, I also have concluded and determined that the word 'loan' in Section 3, when considered along with the amendment brought in by Act No. 1 of 2011, includes overdraft, advance, or other accommodation. That being so, the 1st respondent bank is lawfully entitled to resolve as they have done and recover by *parate* execution.

27. The petitioners did not challenge the said resolution when initially made or published in the Gazette, dated 08.07.2022. The petitioner claims to have continued to negotiate; however, that too appears to be on the premise that the facility was a loan. Then the auction was scheduled with due notice, and in fact, it was so held on 24.02.2023 (*vide* P-22). Upon the auction and sale, the Certificate of Sale was issued on

02.05.2023, and in fact registered on 09.05.2023 (vide R-12). Such Certificate is conferred with finality by Section 15, which provides thus:

> *"1) If the mortgaged property is sold, the Board shall issue a certificate of sale and thereupon all the right, title, and interest of the borrower to, and in, the property shall vest in the purchaser ; and thereafter it shall not be competent for any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower to, and in, the property made or registered subsequent to the date of the mortgage of the property to the bank, in any court to move or invalidate the sale for any cause whatsoever, or to maintain any right title or interest to, or in, the property as against the purchaser.*
>
> *(2) A certificate signed by the Board under subsection (1) shall be conclusive proof with respect to the sale of any property , that all the provisions of this Act relating to the sale of that property have been complied with."*

28. His Lordship Samayawardhena, J., in **CA/RI/22/2018**, observed that:

> *"The conclusiveness of the Certificate of Sale has been emphasized in a long line of decisions. Vide for example the two separate Judgments of the Supreme Court by Justices Mark Fernando and Edussuriya in **Haji Omar v. Wickramasinghe** [2002] 1 Sri LR 105, Supreme Court Judgment of Justice Tilakawardane in **Amaradasa Liyanage v. Sampath Bank** [2015] BLR 63, Supreme Court Judgment of Justice Anil Gooneratne in **HNB v. Thejasiri Gunethilake** in SC Appeal No.189/2012 delivered on 23.11.2016."*

Justice Tilakawardane in ***Amaradasa Liyanage vs. Sampath Bank*** (S.C. Appeal No. 126/2012, decided on 04.04.2014), considered the case of ***Hatton National Bank Ltd vs. Poorvi Marimuttu*** 2004 B.L.R. 92 (C.A. Revision Application No. 1418/2000, decided on 26.04.2004) and ***Haji Omar vs. Wickramasinghe and Another*** (2002) 1 SLR 113, and held as follows:

> *"In terms of considering whether the Certificate of Sale is conclusive, the case of **Hatton National Bank v Marimuttu** [2004] reported in the Bar Association Law Report is relevant… In this regard, Amaratunga J stated*

> *"…the existence of a case where the legality of the sale and the Resolution are being challenged, in itself is not a ground to refuse the Application of the Bank. In terms of Section 15(2) of the Recovery of Loans by Banks Act, **a certificate of sale is conclusive proof with respect to the sale of any property** and that all the provisions of the Act relating to the sale of that property have been complied with. Thus, despite the existence of a case where the sale itself and the certificate of sale have been challenged is not a ground to disregard the conclusive effect" [Emphasis added].*

*Similar sentiments were expressed in **Haji Omar v Wickramasinghe and Another** (2002) (1 SLR 113) where the Petitioner argued that the Certificate of Sale could not be issued as the notices were irregular and that the resolution passed by the Board was not in conformity with the Act. In this case, Fernando J elucidated that*

> *"Section 15 (1) of the Act provides that upon the issue of the certificate the title of the borrower vests in the purchaser, and section 15 (2) makes the certificate 'conclusive proof with respect to the sale . . . that all the provisions of [the] Act relating to the sale . . . have been complied with'. **That includes the passing of the resolution, the notice of sale, the payment of the price, and the sale**" [Emphasis added].*

Therefore, this Court notes that the validity of the Certificate issued has been challenged on vexatious grounds i.e. upon the Certificate being signed by two members of the Board rather than all members of the board, an irregularity that is readily remediable without any adverse effects. Furthermore, given that the Certificate of Sale is, on all counts, valid, it appears to be conclusive proof that all provisions of the Act have been complied with."

Further, Justice Anil Gooneratne in ***Hatton National Bank PLC vs. Thejasiri Gunethilake*** (SC Appeal No.189/2012, delivered on 23.11.2016) held as follows:

> *"Certificate of sale is conclusive proof in respect of that property and as regards its sale being duly complied with in terms of the Act. As such the certificate of sale cannot be challenged, if and when it is issued in terms of the said Act."*

29. Accordingly, I find that upon a Certificate of Sale being issued under Section 15, no party is entitled to move to invalidate such sale or such Certificate. Such Certificate so issued by the Board is provided to be conclusive proof of the sale of such property and that all provisions of this Act relating to the sale of such property have been complied with. All provisions therein will also mean and include the passing of the resolution under Section 5 as empowered by Section 3.

30. In the above circumstances, especially in view of the position taken up by the petitioner in the District Court, which is not denied, the petitioner cannot take a different stand that the facilities are not loans. Secondly, in view of the amended Section 22, the word 'loan' in Section 3 will necessarily include a facility provided under the Islamic Banking Facilities. Thirdly, by whatever name it may be called, the facilities granted are in fact loans in the simple sense.

31. Then, in view of the conclusive nature of the Certificate of Sale and the suppression of a material fact by the petitioner, the petitioner is not entitled to relief as prayed for by this application. Accordingly, I see no basis in law or otherwise to issue notice as prayed for.

32. Accordingly, notice is refused, and this application is dismissed. However, I make no order as to costs.

Notice refused.

JUDGE OF THE COURT OF APPEAL