

**MERAGALA
VS.
PEOPLE'S BANK AND OTHERS**

COURT OF APPEAL.
EKANAYAKE, J.
SRI SKANDARAJAH, J.
CA 839/2003.
NOVEMBER 10, 2006.

Writ of Certiorari - People's Bank Act, No. 32 of 1986, sections 29D - Parate execution - Challenging a Board Resolution - Interpretation Ordinance, section 22 - Could the borrower challenge the legality/validity of resolution ?- Relationship - Contractual - Does writ lie ?

The petitioner sought a Writ of Certiorari to quash the resolution passed by the Bank to parate execute the property in question. The property was kept as security for a loan obtained from the Bank.

HELD:

- (1) In this case the transaction which had taken place between the parties is a loan transaction.

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- (2) The trend of authority would show that the supervisory jurisdiction of this Court does not extend to the resolution of purely contractual disputes.
- (3) When section 29 D of the People's Bank Act, 32 of 1986 is read with section 22 of the Interpretation Ordinance the borrower or any person claiming through or under the borrower will be precluded from challenging the legality and/or validity of any resolution passed under and in terms of section 298.

APPLICATION for a Writ of Certiorari, Prohibition and Mandamus.

Cases referred to :

1. *Podi Nona vs Urban Council, Horana.*
2. *Jayaweera vs Wijeratne 1985 2 Sri LR 413*

Asoka Fernando with L. M. Ariyadasa for petitioner.

Ronald Perera with Chandimal Mendis and Naleen Amarajeewa for respondents.

Cur. adv. vult.

September 6, 2006.

CHANDRA EKANAYAKE, J.

The petitioner by this Writ Application has invoked the writ jurisdiction of this Court seeking inter-alia,

- (a) to grant and issue a Writ of Prohibition prohibiting the 1st and 2nd Respondents acting in accordance with the resolution passed by the Board of Directors of the 1st Respondent Bank on 23.03.2002;
- (b) to grant and issue a mandate in the nature of a Writ of Certiorari quashing the resolution passed by the Board of Directors of the 1st Respondent Bank on 23.03.2002 which was communicated vide notice of resolution published in the 07.05.2003 issue of the Daily News.(P10);
- (c) to grant and issue a mandate in the nature of a Writ of Mandamus :

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- (i) compelling the 1st and 2nd Respondents to permit the petitioner to pay the said outstanding amount of the financial facilities with interest within 7 years repayment period at the rate of Rs. 10,000/- per month ; and
 - (ii) to write off the excessive amounts of interest and surcharges unlawfully charged by the Respondent Bank from the petitioner.

The basis of the Petitioner's application is that the Petitioner having obtained certain financial facilities enumerated in paragraph 1 of the petition for the purpose of expanding his business and for the construction of his house every endeavour was made to settle same by way of instalments despite a decline in his business activities. Vide paragraph 15 of the petition there had been an outstanding balance from the Petitioner to the 1st Respondent Bank. For the reasons stated in paragraph 5 of the petition the 1st respondent bank proceeded to charge a high rate of interest to wit 17% without his consent and 26.5% for the overdraft facility and for the business loan he had taken on interest at the rate of 24% and for the office loans he had taken on interest at the rate of 26.5%. While averring in paragraph 7 of the petition that he had managed to pay a sum of Rs. 12,000,00/- as capital sum plus interest to date excluding the amount written off from his wife's account, it was urged that though the above sum was paid by him and despite the proposal he had made to the bank to settle the same in instalments of Rs. 10,000 per month (as capital sum plus interest) within 7 years the Board of Directors of the Bank has published a notice of resolution in the 07.05.2003 issue of the Daily News paper (P 10). He has further averred for the reasons stated in paragraphs 8 to 10 of the petition the above resolution is based on erratic figures and therefore same is a nullity and liable to be quashed by this Court. In the aforesaid premises the jurisdiction of this Court has been invoked as above.

The Respondents by their statement of objections dated 18th September 2003 whilst only admitting the granting of the said loan of Rs. 750,000/- under Mortgage Bond No. 1777 marked P1A at the rate of 24% interest, a further facility of Rs. 250,000 by Mortgage Bond marked P1B bearing No. 1778 at the rate of 26.5% interest, had denied the rest of the averments in the petition inclusive of the averments in sub-paragraph (1) namely : granting a sum of Rs. 250,000 as a loan at the rate of 26.5% interest to settle the

outstanding balance of approximately Rs. 175,000 on a motor lease agreement vide Mortgage Bond bearing No. 1778 and the balance money approximately a sum of Rs. 75,000 deducted as interest against the aforesaid financial facility of Rs. 500,000 and Rs. 250,000 as averred in sub (a) and (b) of paragraphs (Further the position taken up by) of the respondents was that since the transactions between the petitioner and the 1st Respondent are of a commercial nature and based on a contract this Writ jurisdiction cannot be invoked, and the petitioner has unreasonably delayed the filing of this application. Therefore he is guilty of laches and the petitioner has suppressed the document marked R 3 and thereby violated rules of *uberimma fides*. In the aforesaid premises the Respondents has prayed for a dismissal of the application of the petitioner.

It is common ground that the 1st Respondent-Bank had granted the facilities to the Petitioner and the Petitioner had failed and neglected to repay as agreed upon. Further it is seen from the averments in paragraph 14 as agreed financial facilities from the 1st Respondent he had paid approximately a sum of Rs. 15,000.00/- to the bank as principle plus interest and further he had submitted even a proposal to repay the outstanding amount in monthly installments of Rs. 10,000/- within a period of approximately 7 years. The petitioner's position has been that he failed to convince the Bank and thereafter the Bank proceeded to pass the resolution marked P 10 which according to him is erratic and also excessive high rates of interest have been levied. In the aforesaid premises he has stated in the petition that the resolution is arbitrary, capricious, unlawful, and unjustifiable.

In this regard it would be pertinent to consider provisions of section 29(D) of the People's Bank Act (as amended by Act, No. 32 of 1986). The above section reads as follows :

"29D. Subject to the provisions of section 29E, the Board may by resolution to be recorded in writing authorize any person specified in the resolution to sell by public auction any immovable or movable property mortgaged to the Bank as security for any loan in respect of which default has been made in order to recover the whole of the unpaid portion of such

loan, and the interest due thereon up to the date of the sale, together with moneys and costs recoverable under section 29L, and thereafter it shall not be competent for the borrower or any person claiming through, by 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 to the Bank, in any court to move to invalidate the said resolution for any cause whatsoever, and no court shall entertain any such application.”

According to the petitioner's own contention there had been monies outstanding on account of the financial facilities extended to him by the 1st Respondent-Bank. Further in this case the Petitioner had agreed to obtain facilities subject to the agreements marked R1A, R1B, and R1C. When the Petitioner had defaulted in repayment that means the terms and conditions of the above agreements have been already violated.

In this case the transaction which had admittedly taken place between the parties is a loan transaction. The trend of authority in Sri Lanka would show that the supervisory jurisdiction of this Court does not extend to the resolution of purely contractual disputes. In this regard it would be pertinent to consider the decision of this Court in *Podi Nona vs Urban Council, Horana*⁽¹⁾ where it was held by Ratwatte, J. (Seneviratne, J.) agreeing—

“In as much as the relationship of the parties was contractual the petitioner was not entitled to the remedy by way of certiorari”

The decision of this Court in *Jayaweera vs Wijeratne*⁽²⁾ would also be of assistance in this regard. It was held in the above case by G. P. S. de Silva, J. (Jameel J.) agreeing as follows :-

“Where the relationship between the parties is a purely contractual one of a commercial nature neither certiorari nor mandamus will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of natural justice even if one of the parties is a public authority”.

However the cardinal question that has to be determined by this Court is whether the validity and/or the legality of the resolution passed by the Board of Directors of the 1st Respondent Bank could be challenged by the Petitioner.

A plain reading of the provisions of the above section 29D of the People's Bank Act (as amended) would reveal that it shall not be competent for the borrower or any person claiming through or under the borrower to move in any Court to invalidate the said resolution for any cause whatsoever and no Court shall entertain such application. However the above provisions have to be read with section 22 of the Interpretation Ordinance. When the above provisions are read with section 22, of the Interpretation Ordinance. The borrower will be precluded from challenging the legality and/or validity of any resolution passed under and in terms section 29D of the People's Bank Act. The relief sought by sub paragraph (c) of the prayer to the petition is to issue a mandate in the nature of a writ of prohibition, prohibiting the 1st respondent and the 2nd Respondent from acting in accordance with the passed resolution and the relief sought by sub paragraph (d) of the prayer to the petition is for a writ of certiorari quashing the said resolution passed by the Board. In the aforesaid circumstances the relief sought by sub-paragraph (d) of prayer to the present petition cannot be granted. If the above relief cannot be granted the relief sought by sub-paragraph (e) of the prayer to the present petition also cannot be granted for the simple reason that if the validity and/or legality of the above resolution cannot be questioned then there is no reason to compel the 1st and 2nd Respondents to permit the Petitioner to pay the outstanding amounts and/or to write off the excessive amounts of interest or any surcharges. Therefore the reliefs sought by sub-paragraph (e) of the prayer to the present petition too cannot be granted.

What is left for consideration now is whether the Writ of Prohibition vide sub-paragraph (c) of the prayer to the petition could be granted. This relief too has been based on the resolution of the Board of Directors. When it has been already concluded that the legality and/or validity of the same cannot be questioned this Court cannot prevent the 1st and 2nd Respondents acting in accordance with the same. Therefore this relief also has to fail.

In the light of the above I conclude that the Petitioner's present application cannot be sustained. Hence the necessity does not arise to consider the merits of the other 2 objections raised by the Respondents. Accordingly the application is hereby dismissed. However there will be no order for costs.

SRISKANDARAJAH, J. – *I agree.*

Application dismissed.
